

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Guy C. Glander

93-05139

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Douglas S. LaValle

REPRESENTATION

For Claimant, Guy C. Glander ("Glander"): Richard W. Groner, Esq. of Snyder, Groner & Schieb, Venice, Florida.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"): Francis M. Curran, Esq. of Fowler, White, Gillen, Boggs, Villareal, et. al., Clearwater, Florida.

For Respondent, Douglas S. LaValle ("LaValle"): Francis M. Curran, Esq. of Fowler, White, Gillen, Boggs Villareal, et. al. of Clearwater, Florida.

CASE INFORMATION

Statement of Claim filed: 12/13/1993.

Claimant's Submission Agreement signed on: 10/26/1993.

A Joint Statement of Answer was filed by Respondents MLPFS and LaValle on 3/4/1993.

The Respondents did not file a Submission Agreement as required pursuant to Section 10302 of the Code of Arbitration Procedure.

HEARING INFORMATION

On October 30, 1996 a hearing lasting one session was conducted in Tampa, Florida.

CASE SUMMARY

Claimant alleged that Respondent LaValle handled Claimant's account in an unsuitable fashion by overinvesting in odd lot transactions, with the use of a discretionary trading authorization. Claimant also alleged that LaValle failed to follow the Claimant's basic instructions to keep his funds readily available. Claimant also contended that multiple odd lot purchases increased the costs to his account in the form of brokerage commissions. Claimant also alleged that Respondent MLPFS failed to monitor LaValle and asserted that MLPFS had a duty to make sure his funds were not placed in excessive risk.

Respondents denied all allegations in the Statement of Claim and alleged that before Claimant opened his account Claimant advised LaValle that his average monthly living expenses would be \$1,000.00 per month because he had inherited his parent's home, automobiles, and other personal property. Respondents contend that Claimant ultimately determined to invest one-third of his assets in income producing utility stocks, one-third in growth stocks, and one-third in a discretionary managed account. Respondents contended that the managed account was neither affiliated with Respondent MLPFS or LaValle.

Respondents also contended that Claimant was a sophisticated investor who selected the utility investments based on research reports. Respondents also alleged that Claimant's actual spending habits exceeded the \$1,000.00 per month forecasted prior to opening the account, and this made it necessary to sell positions in his managed account. MLPFS also asserted that all representations made by MLPFS or LaValle were all accurate at the time they were made.

RELIEF REQUESTED

Claimant requested damages in excess of \$50,000.00 plus interest, costs, attorneys' fees, and punitive damages.

- Respondents requested that all claims against them be dismissed and that they be awarded their costs and attorney's fees incurred in defending this action.

ISSUES CONSIDERED & DECIDED

During their deliberations after the hearing, the Panel, after careful consideration of Respondents' Motion to Dismiss and Claimant's responses thereto, has decided to GRANT the Motion to Dismiss. Therefore, all claims against Respondents are hereby dismissed.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$600.00 (one regular hearing session X \$600.00).

Claimant is hereby assessed \$300.00 for which the NASD shall retain the \$500.00 previously deposited in full satisfaction thereof.

Respondents are hereby assessed \$300.00 jointly and severally, \$200.00 of which shall be paid directly to the Claimant, and \$100.00 of which shall be paid to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.

Respondent, MLPFS, is still owing the Section 10333 member surcharge of \$300.00.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/

Cynthia A. Henderson, Esq.

Public / Chairperson

/s/

Willard E. Fawcett

Industry / Panelist

/s/

James W. Neel

Public / Panelist

Date of Decision: January 13, 1997