

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Robert J. Schmollinger

93-05174

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
David Finkel
Joseph P. DiFilippo

REPRESENTATION

Claimant Robert J. Schmollinger ("Claimant") was represented at the hearing by Brian Carlis, Esquire, of the law firm of Stark & Stark, P.C., Princeton, New Jersey.

Respondents Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), David R. Finkel ("Finkel") and Joseph P. DiFilippo ("DiFilippo") were represented at the hearing by John J. Murphy, Esquire, of the law firm of Stradley Ronon Stevens & Young, Philadelphia, Pennsylvania.

CASE INFORMATION

Claimant's Statement of Claim was filed on December 9, 1993.
Claimant's Uniform Submission Agreement was signed January 22, 1994.
Joint Statement of Answer of Merrill Lynch, Finkel and DiFilippo
(collectively "Respondents") was filed on January 5, 1995.

HEARING INFORMATION

Hearing Date/Sessions: November 11, 1996 - 2 sessions
November 12, 1996 - 2 sessions

Hearing Location: 1717 Arch Street, 37th Floor
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Respondents, through its registered representative Finkel, invested funds in Claimant's retirement accounts in unsuitable investments; namely, in limited partnerships sponsored by Merrill Lynch. Claimant alleged that he had given direction to Respondents that he only wanted his funds to be invested in the highest grade, investment quality securities. Claimant further alleged that Finkel made material misrepresentations concerning the risk factors, liquidity, and inherent conflict of interest associated with investing in the Merrill Lynch limited partnership investments. Claimant alleged that these misrepresentations were made to him by Finkel to induce Claimant to agree to the investments. Subsequently, when he received both monthly statements from Merrill Lynch and year end letters from Finkel and DiFilippo, the value of the limited partnerships interest was misrepresented. Claimant alleged that he first became suspicious concerning the value of the limited partnership investments (which had been acquired in 1988)¹ when he consulted with an outside investment advisor. Pursuing this inquiry with Respondents in 1991 resulted in an allegedly deceptive response.

Respondents denied all allegations of wrongdoing asserted by Claimant. Respondents specifically maintained, among other things, that the risks of all investments were fully explained to Claimant and that Claimant knowingly invested in the limited partnerships. Moreover, Respondents maintained that Claimant had invested in similar ventures which were less than investment quality at his own initiative and had expressed his change in investment policy between the time his accounts were opened and the time when the limited partnership investments were made. In addition, Respondents maintained that the investments were appropriate for Claimant.

RELIEF REQUESTED

Claimant requested damages of \$152,368.90, plus costs, reasonable attorney's fees and punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety with costs assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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.

¹ At issue in this case were only Claimant's investments in Equitable Capital Retirement Limited Partnership '88 and ML Media Opportunity Partners, L.P. '88. Prior to the arbitration hearing claims which were made by Claimant concerning investments in ML Media Partners, L.P. '86, MLH Income Realty Partnership, VI, L.P. and ML-Lee Acquisition Fund, L.P. '87 were dropped from the case.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's Statement of Claim is denied in its entirety.
2. That each party shall bear its own expenses, including attorney's fees.
3. Based on the merits of this case, the Panel has decided that the records of Respondents Finkel and DiFilippo shall be expunged of any reference to the claim filed by Claimant.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) formerly Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$500 = \$2,000

Forum Fees Assessed Against Merrill Lynch. Merrill Lynch is liable to and shall reimburse Claimant for the \$500 hearing session deposit previously submitted to the NASD. Therefore, Respondents have a net assessment due to the NASD, Inc. of \$1,500.

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

DATE

12/5/96

Concurring Arbitrators' Signatures

Steven T. Stern
Steven T. Stern, Esq., Chairperson
Public Arbitrator

Robina Fedora Asti, Panel Member
Industry Arbitrator

Jerry Schuchman, Esq., Panel Member
Public Arbitrator

Date Award Served by the NASD Regulation:

December 12, 1996

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's Statement of Claim is denied in its entirety.
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Concurring Arbitrators' Signatures

Steven T. Stern, Esq., Chairperson
Public Arbitrator

12/7/96

Robina Fedora Asti
Robina Fedora Asti, Panel Member
Industry Arbitrator

Jerry Schuchman, Esq., Panel Member
Public Arbitrator

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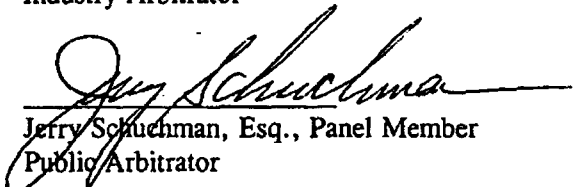
DATE

Concurring Arbitrators' Signatures

Steven T. Stern, Esq., Chairperson
Public Arbitrator

Robina Fedora Asti, Panel Member
Industry Arbitrator

12/9/96



Jerry Schuchman, Esq., Panel Member
Public Arbitrator

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