

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Nancy C. and W. Richard White

93\_05309

**Name of Respondents**

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
W. Charles Wyman  
Robin Corkery

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on December 23, 1993, Claimants Nancy C. White and W. Richard White, who appeared Pro Se, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Charles Wyman and Robin Corkery misled them into purchasing a new offering called Hyperion 1999 Term Trust, which they later discovered was not a suitable investment and did not meet their objectives of a conservative investment. The Claimants contended that due to bad advice, omission of true facts and disregard for 10 years of conservative investing, they have suffered losses for which the Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., W. Charles Wyman and Robin Corkery, through their in-house counsel, Christopher Cavuoti, Esq., New York, NY, maintained that the claims of the Claimants are without merit and further that the Respondents acted in a commercially reasonable manner, consistent with their obligations and responsibilities towards Claimants. The Respondents further maintained that the Claimants were made aware of the risks involved in the investment, and also that any acts complained of by the Claimants were done in accordance with the expressed authority and permission of the Claimants. The Respondents contended that they have committed no wrongdoing and therefore, the claims against them should be dismissed.

**RELIEF REQUESTED**

Claimants W. Richard and Nancy White requested \$9,750.00 in actual damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., W. Charles Wyman and Robin Corkery requested that the claims of the Claimants be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert H. Freise, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on December 15, 1993, by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on April 8, 1994, by the Respondent Charles Wyman on April 11, 1994 and by the Respondent Robin Corkery on April 8, 1994.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Charles Wyman and Robin Corkery are jointly and severally liable and shall pay to Claimants W. Richard and Nancy White \$9,750.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants W. Richard and Nancy White, shall be retained by the NASD, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay \$150.00 to the Claimants as reimbursement of the filing fee.

**AFFIRMATION**

I, **HERBERT H. FREISE, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument which is my oath and award.

A handwritten signature in cursive script, reading "Herbert H. Freise", written over a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:** September 27, 1994