

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Rose Mary Fowler

94-01126

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
Janet Marie Krug  
Larry Ray Petty  
Michael J. O'Leary

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on March 23, 1994 Claimant Rose Mary Fowler ("Claimant"), through her representative, Robert E. Williams, Esq., of Monterey, California, alleged that Respondents Merrill Lynch Pierce Fenner & Smith Inc., Larry Petty and Michael J. O'Leary, through their account executive, Respondent Janet Marie Krug ("Krug"), mishandled her account. Claimant alleged that Respondent Krug recommended a number of transactions that were unnecessary and only benefitted Respondents through commissions, approximately \$7,726.00 with eleven transactions having concealed fees. Claimant contended many of the investments were inappropriate for her as she was a widow. Claimant further contended that Respondents churned her account in order to generate commissions and as a result of the above, she has suffered a loss for which the Respondents should be held liable.

Respondents Merrill Lynch Pierce Fenner & Smith Inc., Janet Marie Krug, Larry Ray Petty and Michael J. O'Leary ("Respondents"), through their representative and in-house counsel, Marie A. Vavra-Coleman, Esq., maintained that Claimant made various investment decisions over the years in order to meet her investment objectives using her own ideas at times. Respondents further maintained that with the changing market conditions, Respondent Krug did make recommendations in order to take advantage of favorable market conditions and avoid adverse market conditions. Respondents contended that Claimant approved each and every transaction and always made an informed decision as each transaction was fully explained to Ms. Fowler beforehand. Respondents further contended that the amount of commission was fully disclosed on her confirmations and account statements. Respondents maintained that no objections were made at the time of the transactions and as a result of the above, they should not be held liable.

**RELIEF REQUESTED**

Claimant Rose Mary Fowler, requested \$9,990.00 in actual damages.

Respondents Merrill Lynch Pierce Fenner & Smith Inc., Janet Marie Krug, Larry Ray Petty and Michael J. O'Leary, requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Duane W. Dresser, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Rose Mary Fowler, on March 11, 1994 and by the Respondents Larry Ray Petty and Michael J. O'Leary, on April 12, 1995, by Respondent Merrill Lynch Pierce Fenner & Smith, Inc., on April 4, 1994, and not by Respondent Janet Marie Krug, as is required by Section 12 and 13 of the NASD Code of Arbitration Procedure.

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. The claims of the Claimant Rose Mary Fowler against Respondents Janet Marie Krug, Larry Ray Petty and Michael J. O'Leary are denied in their entirety.
2. Respondent Merrill Lynch Pierce Fenner & Smith, Inc., is liable and shall pay to Claimant Rose Mary Fowler, \$2,209.00 in actual damages.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Rose Mary Fowler, shall be retained by the NASD, Inc. Respondent Merrill Lynch Pierce Fenner & Smith Inc., is liable and shall pay to Claimant Rose Mary Fowler, \$150.00 as reimbursement of the filing fee.
4. All other relief requests are denied.

### **AFFIRMATION**

I, **DUANE W. DRESSER, 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.



Duane W. Dresser, Esq.

DATE OF DECISION: March 5, 1996