

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Michael A. Adams

NASD Arbitration
No. 94-01136

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith Inc.

REPRESENTATION

For Claimant: Larry L. Caudle, Esq., Anchorage, Alaska

For Respondent: Scott J. Nordstrand, Esq., Owens & Turner, P.C.,
Anchorage, Alaska

CASE INFORMATION

Statement of Claim filed: May 27, 1994

Claimant's Submission Agreement signed: May 18, 1994

Statement of Answer filed by Respondent: August 18, 1994

Respondent's Submission Agreement signed: July 14, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): September 24, 1996 (three sessions)

Hearing Location: Anchorage, Alaska

CASE SUMMARY

Claimant alleged that the above-referenced dispute involves allegations by Claimant Michael A. Adams that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch), by and through its broker engaged in trading activities which were unauthorized and imprudent during 1992 and 1993. Claimant further alleged that Merrill Lynch sold several Certificate of Deposits (CD) held in investment accounts and purchased stock in the Merrill Lynch Global Fund (Global Fund). Claimant further alleged that shortly after the investment was made, the Global Fund stock declined in value, and alleged that during this period of time, Mr. Adams was not kept informed of these trades, nor was he properly advised as to the risks associated with changing his CD investments to stock in the Merrill Lynch gold accounts.

Respondent denied Claimant's allegations of wrongdoing and alleged that prior to each of the subject transactions, Merrill Lynch Financial Consultant, William Taylor, fully and completely informed Claimant of the investment objectives, financial risks and financial benefits of the Global Fund and Claimant approved each purchase of shares in the Global Fund with full knowledge and understanding of those matters. Respondent further alleged that the Global Fund was a suitable investment for Claimant in light of his stated investment objectives and risk tolerance, as evidenced in his Individual Client Account Fact Sheet, dated January 2, 1991. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$19,894.07. Claimant asserted that he is also entitled to the earnings he would have made on the CD's since the date of the alleged unauthorized transactions.

Respondent requested that the arbitration panel find in favor of Merrill Lynch and award it any and all appropriate costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

None.

AWARD

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

1. Respondent is liable for and shall pay to Claimant the sum of \$17,571.04.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: Forum fees shall be split between the parties and are calculated as follows:

| | | |
|---|---|----------|
| Three hearing sessions @ \$300.00/session | = | \$900.00 |
| Total fees assessed | = | \$900.00 |
| Claimant's share (50%) | = | \$450.00 |
| Credit for hearing deposit | = | \$600.00 |
| Refund amount | = | \$150.00 |
| Respondent's share (50%) | = | \$450.00 |
| Balance due | = | \$450.00 |

Fees are payable to the National Association of Securities Dealers, Inc. The presiding arbitrator waived the postponement fees previously assessed in this matter.

PRESIDING ARBITRATOR

| <u>Name</u> | <u>Public / Industry</u> |
|--------------------------|--------------------------|
| Frederic E. Dorkin, Esq. | Public Arbitrator |

Presiding Arbitrator's Signature



Date of Decision: Oct 23, 1996