

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John M. and Beverly A. Draughon

94-01206

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.;
John Markle

REPRESENTATION

For Claimant: John M. Draughon and Beverly A. Draughon ("Draughon") were represented by John M. Draughon, Houston, Texas.

For Respondent: Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch") and John Markle ("Markle") were represented by Scott E. Daniel, Esq. of Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd. located in North Little Rock, Arkansas.

CASE INFORMATION

Statement of Claim filed: March 30, 1994.

Claimants' Submission Agreement signed on: March 25, 1994.

Statement of Answer filed by Respondents Merrill Lynch & Markle on: August 8, 1994.

Respondent Merrill Lynch's Submission Agreement signed on: August 8, 1994 by Sebastian L. Pandolfo, Vice President and Assistant General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc.

Respondent Markle did not file an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: None held.

Hearing Date/Sessions: March 22, 1995 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants alleged that Respondent Markle, while employed by or acting as an agent for Respondent Merrill Lynch, engaged in an unauthorized sale of bonds. The claimants specifically alleged that:

1. In April of 1989, Draughon discussed the purchase of units in certain bond trusts with Markle, mentioning several times that he wished to be certain that the bonds were a safe and long term investment to create tax free income. Markle replied that they were all insured by first class companies and maturity was after the year 2000 (10 year maturity, minimum);
2. Two purchases were made in April and May of 1989. On Draughon's June 26/July 30, 1993 Statement, he received a "Prin Payment" of \$72,795 from the Texas Trust (#5);
3. Draughon was upset that he was "sold out" of the bonds after planning on the income through at least the year 2000.

Respondents denied the material allegations of the Statement of Claim, alleging:

1. Draughon purchased a total of 750 units of the Merrill Lynch Municipal Investment Trust Fund Multistate Series 5T Texas at a cost of \$784,565 in two separate purchases in April and May of 1989;
2. The Trust consisted of a portfolio of insured municipal bonds with a variety of terms and conditions which were in the prospectus received by Draughon;
3. A portion of the bonds were redeemed by its issuer prior to maturity pursuant to its fully disclosed Optional Refunding Redemption provisions. The bonds were not sold out. The portfolios received the required premium payment and this was passed on to the Draughons; and
4. The Draughons could not receive the same interest payment on that bond and the issuer paid the portfolio and Draughons a premium.

In addition, the Respondents asserted the following affirmative defenses:

- 1) The Statement of Claim fails to state a claim upon which relief can be granted;
- 2) Claimants are barred from recovery because they directed, authorized,

consented to, acquiesced in, and/or ratified all transactions;

3) Claimants made all of the investment decisions, and any losses were caused by these decisions and market conditions outside the control of Respondents; and

4) Respondents are not responsible to Claimants because they acted properly and in good faith.

RELIEF REQUESTED

Claimants requested entry of an award for damages in an unspecified amount and reinstatement of the investment.

Respondents requested that the claims be denied in all respects and that the costs of the action, including attorneys' fees, be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Markle did not file and executed submission agreement, but answered and appeared at hearing and is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

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 originals remain on file with the NASD. >

AWARD

After considering the pleading, 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. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum

Fees are assessed: Two (2) hearing sessions X \$600.00 per session = \$1,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimants, John and Beverly Draughon. In addition, the NASD shall retain the \$200.00 Section 45 surcharge paid by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. Furthermore, Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and John Markle are jointly and severally liable for and shall pay to the NASD the sum of \$600.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Russell E. Rains, Esq.

May 25, 1995

Russell E. Rains, Esq.

Public Arbitrator

Chairperson

/s/ Kathryn Ann McCoach

May 23, 1995

Kathryn Ann McCoach

Public Arbitrator

/s/ Frederick W. McGuinness

May 23, 1995

Frederick W. McGuinness

Industry Arbitrator

For NASD Use Only

Date of Decision: May 25, 1995