

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Catherine Sheffield

94-01795

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Scott M. Griswold

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**REPRESENTATION**

For Claimant, Catherine Sheffield: Jane A. Sirak, Esq., West Palm Beach, Florida.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill"): David P. Ackerman, Esq. of the law firm of Ackerman, Link & Sartory, West Palm Beach, Florida.

Respondent, Scott M. Griswold ("Griswold"), did not appear (see "Other Issues")

**CASE INFORMATION**

Statement of Claim filed: May 13, 1994.

Claimant's Submission Agreement signed on: July 12, 1994.

Statement of Answer and Cross-Claim filed by Respondent, Merrill, on: September 10, 1994.

Respondent Merrill's Submission Agreement signed on: September 8, 1994.

Respondent, Griswold, did not execute a Uniform Submission Agreement or file a Statement of Answer as required pursuant to Section 10314 (formerly Section 25) of the Code of Arbitration Procedure.

**HEARING INFORMATION**

One in-person pre-hearing conference was conducted on September 29, 1995 and fifteen hearing sessions were conducted on June 19 and 20, 1996, June 24 and 25, 1996 and September 4, 6 and 9, 1996 in Fort Lauderdale, Florida.

**CASE SUMMARY**

Claimant alleged that while Respondent, Griswold, was employed by Merrill and had authority to recommend investments, he defrauded her by recommending and selling to her worthless unregistered securities; Claimant alleged claims in fraud, Chapter 517 of the Florida Statutes, Respondeat Superior, Negligent Supervision, Breach of Fiduciary Duty, Negligence and Gross negligence. Claimant further filed claims against Respondent, Merrill, for the alleged fraud that was perpetrated upon her by its employee, Griswold, after he was terminated by Merrill. Claimant alleged Breach of Fiduciary Duty, Negligence, Gross Negligence, Negligent Supervision, Fraud and Chapter 517 violations for failure to investigate the fraud of its employee; engaging in a scheme to cover-up or conceal their employee's fraud; making false reports to the State of Florida and regulatory agencies on U-5's and other documents;; and intentionally and/or recklessly sending misleading correspondence to their clients regarding the circumstances of the termination of Respondent, Griswold.

Respondent, Merrill, denied all allegations of wrongdoing and asserted that a reasonable investor would not have believed these mortgage investments to be sponsored by or related to Merrill in any way; that the mortgage investments Claimant complained about were private securities transactions which merrill had no knowledge of and did not approve. Merrill further moved to dismiss Claimant's claims under NASD Rule of Fair Practice Section 40 and argued that under Section 40, the rule directly applicable to private securities transactions, a brokerage firm has no duty to supervise private securities transactions absent written notice and approval of the transactions; that it was undisputed that Respondent, Griswold, failed to provide written notice to Merrill Lynch of the private securities transactions at issue in this case, as required by Section 40; that Merrill had no knowledge of these transactions at the time they were made, and, therefore, never could have approved them. Respondent, Merrill further asserted that under Section 40, it could not be held liable for the losses incurred by Claimant as a result of her private securities transactions.

Respondent, Merrill, asserted a Cross-Claim against Respondent Griswold alleging that at all times with respect to the transactions at issue, Mr. Griswold acted outside the scope of his employment with Merrill and he did not inform Merrill of the very activities at issue. Respondent Merrill next maintained that Respondent, Griswold, continued the activities at issue even after his employment with Merrill had been terminated by the firm. Respondent Merrill maintained that in the event that the panel renders any monetary award in favor of the Claimant against Merrill then Respondent Merrill requested reimbursement from Griswold for the full amount of any such award, as well as its attorneys' fees and costs incurred in the defense of the action.

**RELIEF REQUESTED**

Claimant requested compensatory damages in a minimum amount of \$210,000.00; punitive damages in a minimum amount of \$630,000.00; reasonable attorneys' fees; prejudgment interest on the compensatory damages; costs of this action including the costs and expenses of expert witnesses; and any other relief that the arbitrators deemed appropriate under the circumstances.

Respondent, Merrill, requested that the Statement of Claim be dismissed in its entirety, together with such other and further relief as is deemed just and proper. Alternatively, in the event of any monetary award against Merrill, Merrill requested that it be awarded judgement in the same amount on its cross-claim against co-Respondent Griswold, together with such other and further relief as is deemed just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

1. Respondent, Griswold, did not file a Statement of Answer nor did he file an executed Submission Agreement as required under Section 10314 (formerly Section 25) of the Code of Arbitration Procedure.
2. By letter dated February 23, 1996, signed by Claimant's attorney, Jane A. Sirak, the NASD was advised that Claimant wished to dismiss Respondent, Griswold, as a party, without prejudice, with respect to this matter.
3. 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 pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill, is found liable and shall pay to the Claimant the sum of \$50,000.00, prejudgment interest specifically excluded.
2. The Claimant's request for punitive damages is denied.
3. Respondent, Merrill, is further found liable and shall pay to the Claimant the sum of \$16,000.00 which represents a portion of the Claimant's costs (exclusive of attorneys' fees). The balance of Claimant's costs is denied.
4. The parties agreed that a court of competent jurisdiction shall decide the issue of attorneys' fees; therefore, the arbitration panel did not consider the issue of attorneys' fees.
5. Respondent, Merrill's, request for relief on its Cross Claim is hereby dismissed without prejudice.
6. All other claims are hereby denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$16,000.00 (15 hearing sessions X \$1,000.00 plus one in-person pre-hearing conference X \$1,000.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$8,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$7,000.00.
2. Respondent, Merrill, is hereby assessed Forum Fees in the amount of \$8,000.00 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$7,400.00.
3. The NASD shall retain the \$450.00 previously paid by Merrill for the non-refundable filing fee leaving a balance due to the NASD, by Merrill, of \$50.00 in relation to that fee.
4. Respondent, Merrill, shall pay to the NASD the non-refundable member surcharge of \$200.00.

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

**Concurring Arbitrators' Signatures**

/s/

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Diane M. Perry, Esq.

Public/Chairperson

/s/

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Arnold Sarrow

Public/Panelist

/s/

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Lucie L. Sabella

Industry/Panelist

Date of Decision: October 23, 1996