

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Mark Scarmazzo,  
Claimant,

vs.

94-01807

Frederick Moss and  
Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
Respondents.

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**REPRESENTATION**

Claimant, Mark Scarmazzo, appeared pro se.

For Respondents, Frederick Moss and Merrill Lynch, Pierce, Fenner & Smith, Inc., Christopher Cavouti, Esq.

**CASE INFORMATION**

Statement of Claim filed: May 12, 1994

Claimant's Submission Agreement signed on: May 6, 1994

Respondents' Joint Statement of Answer filed: July 25, 1994

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on:  
July 25, 1994

Respondent, Frederick Moss's Submission Agreement signed on: July 22, 1994

### **HEARING INFORMATION**

Hearing dates/sessions:                      March 17, 1995              2 Sessions

The hearings were held at the offices of the National Association of Securities Dealer, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant, Mark Scarmazzo (" Mr. Scarmazzo") alleged that on the advice of Respondent, Frederick Moss ("Mr. Moss"), he invested in Merrill Lynch Federal Securities Trust Class B as older investments came due. The Claimant alleged that the bulk of the investments were made at 9.85 per fund share when a large certificate of deposit came due.

Claimant alleged that in December 1993 he called Mr. Moss to sell his entire position in the investments which was then trading at approximately \$9.99 or \$9.98. Claimant alleged that Mr. Moss suggested to hold the securities and that he (Mr. Moss) would call the Claimant if the price went to \$9.85 per share.

Claimant further alleged that he called Mr. Moss on April 4, 1994 after receiving his statement, which showed that the shares were selling at \$9.66, and asked Mr. Moss why he had not called when the share went below \$9.85 per share. Claimant alleged that he told Mr. Moss to sell his entire investment immediately and asked what Mr. Moss and/or Merrill Lynch would do about Mr. Moss's broken promise. Claimant alleged that Mr. Moss informed him in a later conversation that his securities were sold at \$9.39, and that neither he nor Merrill Lynch would do anything about the situation.

Finally, the Claimant alleged that he would have sold the entire investment in December 1993, but for Mr. Moss's promise that he would call if the price per share dropped to \$9.85.

Respondents maintained that the Claimant's investment objectives included income and price appreciation and that his investments, among others, was the purchase, on six different occasions, of Merrill Lynch Federal Securities Trust Class B which is an open-end fund that seeks a high current return by investing in securities of the U.S. Government and its agencies.

Respondents alleged that Mr. Moss spoke to the Claimant on December 14, 1993, who inquired about liquidating his position in the fund and Mr. Moss suggested holding the fund and to reevaluate the idea of liquidating if the price per share reached \$9.85; the Claimant agreed.

Respondents alleged that Claimant called Mr. Moss on April 4, 1994, to ask why Mr. Moss had not called him when the fund reached \$9.85 per share and stated that if Mr. Moss had he would have sold the fund at \$9.85. Respondent alleged that Claimant stated he wanted his position sold and Merrill Lynch to make up the difference between the \$9.39 selling price and \$9.85.

Respondents further alleged that in a letter dated April 10, 1994 from Mr. James Rintoul, III, Administrative Manager of the Morristown, New Jersey branch office, explained to the Claimant that Merrill Lynch could not enter Sell Stop orders on mutual funds; that the Claimant was notified of the price of his fund in his monthly statement and that the Claimant was free to monitor the funds price in the newspapers.

Finally, Respondents alleged that Claimant was willing to accept the risk and price fluctuations involved with the fund and sold the fund against the advice of Mr. Moss. Respondents, alleged that Claimant did not suffer a loss on the sales of the fund but actually experience a net gain of \$11,366.

#### **RELIEF REQUESTED**

The Claimant requested actual damages in the amount of \$7,239.44 representing the difference between \$9.85 per share and the actual sale price of \$9.39 per share.

The Respondents, requested that all claims be denied in their entirety.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims are hereby denied.
2. Respondents shall pay to Claimant the sum of \$200 as reimbursement for Hearing Sessions fees paid by Claimant.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Hearing Sessions: 3/17/95 - 2 Sessions x \$200 = \$400.00

Respondents are assessed \$400 which represents total forum fees due, less \$200 reimbursement paid to Claimant, leaving \$200 due. Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD \$200.00 to represent forum fees.

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

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**ARBITRATOR'S SIGNATURE**

55th/Can

**Neil J. Carey**  
**Public Chairperson**

**MAY 9, 1995**

**Date of decision:** \_\_\_\_\_

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STATE OF: *NEW YORK*

COUNTY OF: *NEW YORK*

SS:

On this *9* day of *MAY*, 1995, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Andrew Russell*

ANDREW RUSSELL  
Notary Public, State of New York:  
No. 02RU5034752  
Qualified in New York County *26*  
Commission Expires Oct. 17, 19*96*