

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Prabhakar Kamath, individually and as
Custodian for Rahul Kamath, as Custodian
for Haresh Kamath, as Trustee for the
Prabhakar Kamath M.D. Profit Sharing Plan,
and Geetha Kamath, individually,
Claimants,

and

No. 94-01894

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
and Shariq Mansuri,

Respondents.

REPRESENTATION OF PARTIES

Prabhakar Kamath, individually and as Custodian for Rahul Kamath, as Custodian for Haresh Kamath, as Trustee for the Prabhakar Kamath M.D. Profit Sharing Plan, and Geetha Kamath, individually ("**Claimants**") were represented by Prabhakar Kamath.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and Shariq Mansuri ("**Respondents**") were represented by Byron E. Francis, Esq., of Armstrong, Teasdale, Schlafly & Davis, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about May 19, 1994. Claimants' Submission Agreement was signed on April 26, 1994, and June 15, 1994.

Respondents' joint Statement of Answer was filed on or about September 19, 1994. Respondents' Submission Agreements were signed on September 19, 1994, and October 18, 1994, respectively.

HEARING INFORMATION

The hearing was held on September 19, 1995 in St. Louis, Missouri, for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that Respondents: Recommended transactions and executed transactions for the Claimants in unsuitable investments, breaching their contract with the Claimants by violating the

rules and regulations of the various exchanges, the customs and usages of the marketplace and/or Missouri law and/or federal law; intentionally or negligently failed to supervise the Claimants' account in violation of the Rules and Regulations of the NASD and/or Missouri laws, rules or regulations; used Claimants' funds in an improper manner; breached their fiduciary duties owed to the Claimants; perpetrated fraud upon the Claimants in violation of Missouri common law, Missouri corporate securities laws, rules and regulations, and/or federal laws, rules and regulations, including, without limitation, Rule 10b-5; and were negligent, and such negligence caused the loss of the Claimants. The allegations arose out of transactions in securities more fully presented at the hearing.

In their joint Answer, the Respondents, unless otherwise admitted therein, denied each and every allegation of wrongdoing and liability set forth in, or implied by, the Statement of Claim. In addition, Respondents asserted the following affirmative defenses: The Statement of Claim fails to state a claim upon which relief may be granted; Respondents breached no duty owed to Claimants; Respondents were not negligent in their dealings with Claimants; any losses suffered by Claimants were due to their own negligence; despite investing in equities as early as May 1991, Claimants did not express dissatisfaction with these investments until March 1993, Claimants have thereby waived their claims; intervening and superseding causes, including market forces, over which Respondents had no control, caused some or all of Claimants' losses; some, if not all, of claimants' claims are barred by the applicable statutes of limitations; Merrill Lynch, Pierce, Fenner & Smith, Inc. exercised proper supervision over Mr. Mansuri and Claimants' accounts; and Claimants are not entitled to attorneys' fees.

RELIEF REQUESTED

Claimant requested a joint and several award against Respondents as follows: Compensatory damages of not less than \$80,000.00; pre and post-award interest at the maximum rate allowed by law from the date of the original investment; and for costs of arbitration expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable.

Respondents requested that the arbitrators hearing this matter dismiss in full Claimants' arbitration claim and assess all costs against them.

OTHER ISSUES CONSIDERED & DECIDED

On or about August 11, 1995, Respondents filed with the NASD a Motion to Dismiss the Statement of Claim on the grounds that the Claimants had failed to follow the provisions of the NASD Code of Arbitration Procedure (the "Code"). After review of the relevant documents, and deliberation, the undersigned arbitrators denied Respondents' motion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, 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:

Claimants claims made against the Respondents are, and each of them, denied and dismissed with prejudice.

Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$500.00 = \$1,000.00 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimants.

Pursuant to Section 45 of the Code, the NASD shall retain the nonrefundable member surcharge in the amount of \$200.00 previously paid to the NASD by Merrill Lynch, Pierce, Fenner & Smith, Inc.

Additional forum fees in the amount of \$500.00 are assessed against Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

Dated:

Keith D. Patten
Keith D. Patten
Public Arbitrator, Presiding Chair

s/s

October 12, 1995

Richard K. Zerr
Richard K. Zerr
Public Arbitrator

s/s

October 11, 1995

Donald A. Estell
Donald A. Estell
Industry Arbitrator

s/s

October 11, 1995