

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bernice Heinstein

vs.

Award No.
94-01980

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Paul Knouse

REPRESENTATION

For Claimant, Bernice Heinstein ("Claimant"), appeared pro se.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Paul Knouse ("Knouse") (collectively "Respondents"), Samuel A. Turvey, Esq., in-house counsel for MLPFS, located in New York.

CASE INFORMATION

Statement of Claim was filed on May 26, 1994.

Claimant's Submission Agreement was signed on May 20, 1994.

Joint Statement of Answer was filed by Respondents on September 2, 1994.

Joint Amended Statement of Answer was filed on June 20, 1995.

Merrill Lynch and Knouse did not execute Submission Agreements.

HEARING INFORMATION

Hearing Date/Sessions: July 7, 1995 - 2 sessions

Hearing Location: NASD offices, located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that Respondent, Merrill Lynch, breached its duty to Claimant when it failed to purchase a \$25,000 Bond of Israel Government as requested, and thereby causing the

purchaser option date to expire.

Claimant alleges that she wanted to purchase an Israel Bond for \$25,000 and that she contacted Knouse, a stockbroker at Merrill Lynch, and met with him on July 20, 1992, at 10:00 AM. Claimant alleges Knouse agreed to purchase the bonds on an accommodating basis and sent paperwork to Claimant to be completed. Claimant alleges that Knouse assured her that the \$25,000 at the Bank of Boston could be transferred by Electronic Transfer which would take an hour. Claimant also alleges she received her Bank of Boston statement dated August 20, 1992, stating her account was closed on August 12, 1992 but her September 5, 1992, statement from Merrill Lynch showed that the money had been transferred from the Bank of Boston on August 20, 1992. Claimant further alleges that on September 10, 1992, she received a call from Knouse informing her that he had not purchase the Israel Bond because it was no longer being issued and suggested that she purchase a zero coupon bond at 6% due in the year 2007.

Claimant further alleges that the Bank of Boston received the transfer request by mail at 4:00 PM on August 11, 1992 and sent the check to Merrill Lynch on August 12, 1992 by mail and that Mr. Lubovsky at the Israel Bond office informed Claimant that the Israel Bond issue had been stopped August 14, 1992. Claimant states that she sent a letter on September 17, 1992 to Mr. Paul Fehhrenchbach manager at the Merrill Lynch office in Boston, and he stated that he would investigate the matter. Claimant further alleges that she spoke with Mr. Baum who proposed crediting all transfer fees and paying Claimant's account 7-1/2% until March 7, 1993. Claimant alleges that he stated this would be put in writing when Claimant received nothing in writing she requested mediation. Claimant alleges that on March 17, 1993, she received her February 1993 statement with a credit for \$592.04. In addition there was a \$41 custodial fee and credits of 7-1/2% to February 24, 1993.

Respondents deny liability to Claimant and assert 5 affirmative defenses. Respondent allege that Claimant contacted Knouse at Merrill Lynch and visited his office on July 28, 1992 to inquire about purchasing \$25,000 State of Israel 7 1/2% bonds but she did not sign any paperwork to transfer money into a Merrill Lynch account until August 4, 1992. Respondent also alleges that Claimant was informed that funds must first be received at Merrill Lynch before the purchase could be made. Respondents further allege that the purchase of these bonds was subject to availability. Respondents alleges that they contacted the Bank of Boston to find out status of transfer and was informed that the bank did not receive the request on August 17, 1992, so a second request was sent. Respondents contend that they did not receive Claimants \$26,129.49 deposit until August 20, 1992 and that by August 14, 1992, the State of Israel 7 1/2% bond issue was sold out and no longer available. Respondents contend that they attempted to provide Claimant with alternative investments with comparable return characteristics but she was not interested. Respondents contend that any delays were caused either by the customer end or the Bank of Boston. Respondents allege that the bond was supposed to be available until October and the failure to purchase the bond was caused by its unanticipated over subscription.

RELIEF REQUESTED

After contacting the Israel Bond office on June 15, 1993 to find out what the comparable bond rate and term were, Claimant assessed damages to be \$21,900.00.

Respondents request that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim for damages is denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fee(s) are assessed and shall be borne equally by the parties.

Non-refundable Filing Fee: \$100.00

Hearing Session Fee: \$600.00 (2 hearing sessions @ \$300.00 per session)

Total Fees = \$700.00

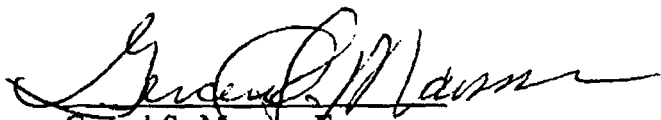
1. Claimant is assessed \$350.00. Claimant previously paid \$400.00 and is entitled to a refund of \$50.00.
2. Respondents are jointly and severally assessed \$350.00. Respondents shall satisfy this assessment by reimbursing Claimant \$50.00 and by remitting the balance \$300.00 to the NASD.

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

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Sole Arbitrator's Signature



Gerard S. Marsan, Esq.

NASD Date of Decision: August 23, 1995