

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Domingo Procopio and Roque Procopio

94-02207

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Daniel Diaz

REPRESENTATION

For Claimants: David A. Pearl, Esq. and Carlos F. Concepcion, Esq. of Concepcion, Sexton & Urdaneta, Coral Gables, FL.

For Respondents: Alex J. Sabo, Esq. and Bennett Falk, Esq. of Morgan, Lewis & Bockius, LLP, Miami, FL.

CASE INFORMATION

Statement of Claim filed: June 13, 1994.

Claimants' Submission Agreement signed on: June 7, 1994.

Joint Statement of Answer filed by Respondents on: September 15, 1994.

Respondents' Submission Agreements signed on: September 14, 1994.

HEARING INFORMATION

On October 10, 1996 a telephonic pre-hearing conference lasting one session was conducted with the Chairperson.

On August 14, 15, and 16, 1996 and January 14, 15, 16, and 17, 1997, in Fort Lauderdale, FL, hearings lasting 14 sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for losses which occurred in their account due

to the investment strategies of Daniel Diaz ("Diaz") in trading in cross-currency financing. Claimants further alleged the following: that Respondents failed to advise Claimants that such an investment would be made and failed to explain or warn Claimants of the extreme risk associated with the strategy as well as how leverage would magnify the risks; that Diaz, without Claimants knowledge or approval, used a credit facility of one million dollars and invested the proceeds in this highly risky investment and that such investment was unsuitable for the Claimants, who were unsophisticated in such areas; that Diaz intentionally misled Claimants as to the value of their account by failing to disclose that any losses had occurred as well as intentionally misstating in his own handwriting the value of the account; that Merrill Lynch failed to adequately supervise Diaz and that a fiduciary duty existed, which also was breached because of these actions; and, that the Claimants suffered losses as a result of the actions by the Respondents.

Respondents denied any liability to Claimants and alleged that Claimants, international businessmen and investors, were referred to them by another client. Respondents further alleged the following: that Claimants rejected a conservative investment recommendation in favor of a cross-currency leverage strategy involving a greater degree of risk; that the same strategy was followed by the client who made the referral; that Claimants received and signed a risk disclosure document that stated unequivocally the potential risks associated with their chosen strategy; that at all times, Respondents advised Claimants with regard to the status of their account, through meetings, telephone calls and account statements; and that Claimants authorized and approved all transactions, and followed the strategy without complaint for more than two years.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$260,000.00, interest, lost profits, restitution of all commissions and margin interest charged, punitive damages, treble damages, expert witness costs, filing fees and costs of this proceeding.

Respondents requested a dismissal of Claimants' Statement of Claim in its entirety, costs, and such other relief as the arbitrators deemed just and proper. Respondent Diaz requested an expungement of any reference to this matter from his CRD/Employment records.

OTHER ISSUES CONSIDERED & 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 hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Daniel Diaz and Merrill Lynch are found not liable and, therefore, all

claims against them are hereby dismissed.

- 2) Claimants' requests for interest, lost profits, restitution of all commissions and margin interest charged, punitive damages, treble damages, expert witness costs, filing fees and costs of this proceeding are hereby denied.
- 3) Respondents' request for costs are hereby denied.
- 4) The Respondent Daniel Diaz' request for expungement of any reference to this matter from his CRD/Employment records, which was unopposed by the Claimants, shall be granted.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$14,300.00 (one pre-hearing conference x \$300.00 plus 14 hearing sessions x \$1,000.00).

Claimants are hereby assessed \$14,300.00 for which the NASD shall retain the \$700.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$13,600.00.

The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

Name

15/

Public/Industry

Public

Monica I. Salis, Esq.

/s/

Industry

Edward S. Burstein

Dissenting Arbitrator's Signature

/s/

Public

Earl Fleisig

February 6, 1997

Date of Decision: _____