

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jill Kligman

94-02741

Name of Respondents

**Merrill Lynch, Pierce, Fenner & Smith,
Joseph Toro
Thomas Pristavec
Emdadul Kahn**

REPRESENTATION

For claimant Jill Kligman ("claimant"), appeared George V. Cornell III, a sole practitioner located in Staten Island, New York.

For respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Joseph Toro ("Toro") and Thomas Pristavec ("Pristavec") (collectively referred to as "respondents"), appeared Samuel A. Turvey, Senior Counsel of Merrill Lynch.

Respondent Emdadul Kahn ("Kahn") did not appear at the hearing in this matter.

CASE INFORMATION

Statement of Claim was filed on July 11, 1994. Claimant's Submission Agreement was signed on July 11, 1994.

A Joint Statement of Answer and Cross Claim was filed by respondents Merrill Lynch and Pristavec on October 3, 1994. First Amended Statement of Answer and Cross Claim was filed by Merrill Lynch, Toro and Pristavec on November 7, 1994. Second Amended Statement of Answer, Cross Claim and Third Party Claim was filed by Merrill Lynch, Toro and Pristavec on May 11, 1995. Merrill Lynch, Toro and Pristavec did not file executed Submission Agreements with the NASD.

Kahn did not file a Statement of Answer or a Submission Agreement with the NASD.

HEARING INFORMATION

Pre-Hearing Conference:	July 18, 1995	-	full panel
Hearing Dates/Sessions:	January 23, 1996	-	2 sessions
	January 24, 1996	-	2 sessions
	April 23, 1996	-	2 sessions
	June 24, 1996	-	1 session

The hearings conducted on January 23, 1996 and January 24, 1996 were held at the National Association of Securities Dealers, Inc. offices in New York, New York. The hearings conducted on April 23, 1996 and June 24, 1996 were held at the City Midday Club located at 140 Broadway, New York, New York.

CASE SUMMARY

Claimant alleged that she was an unsophisticated investor, with no prior investment experience and little knowledge of the stock and bond markets. Claimant further alleged that she was introduced to Kahn in the summer of 1992 and that she informed him that her investment objectives were safety of principal and growth. Claimant asserted that Kahn told that her objectives could be met by trading options via the use of a computer system designed by Merrill Lynch.

Claimant alleged that she opened her account with Merrill Lynch on, or about, August 31, 1992 and that, even though Kahn solicited the accounts, Toro was the registered representative listed on her account statements. Claimant further alleged that the risks of option trading were never explained to her.

Claimant alleged that, between August 31, 1992 and February 28, 1993, she invested \$113,000.00 with Merrill Lynch and that Kahn and Toro placed her entirely in high risk options trading. Claimant further alleged that these funds constituted her entire net worth. Claimant also alleged that, during this period, she was rendered virtually insolvent due to respondents' unsuitable and often unauthorized trading practices.

Claimant contended that her initial account activity was index option purchases, which resulted in a loss of her original \$5,000 cash deposit plus approximately \$2,500 more than was authorized. Claimant further contended that this purchase resulted in three Regulation T calls which should have caused her account to be reviewed for suitability and restricted by the branch manager. Claimant also alleged that over a five month period there were over 50 transactions including five Regulation T calls, which should have caused her account to be reviewed and restricted. Claimant alleged that most of these transactions were unauthorized and that Pristavec chose to override the Regulation T calls and allowed the illegal trading to continue. Claimant further alleged that transactions in her account generated \$45,000.00 in gross commissions.

Claimant contended that in the last twenty days of the existence of her account losses totaling over \$68,000 occurred. Claimant also alleged that Toro represented to her that he could make

up for these losses by the use of initial public offerings and writing naked options.

Respondents Merrill Lynch, Toro and Pristavec denied all charges of wrongdoing and maintained that claimant's accounts were at all times serviced in a lawful, competent and professional fashion and in accordance with claimant's express directions. Respondents further maintained that, at the time claimant's account was opened, she indicated that she had an annual salary of \$25,000 to \$50,000 and a net worth in excess of \$50,000 and that she was interested in pursuing aggressive investment strategies.

Respondents maintained that claimant was approved for index options purchases during August 1992 and that claimant listed her investment objective as speculation on the options agreement. Respondents further maintained that the options agreement, which was forwarded to claimant for review, contained extensive risk disclosures.

Respondents maintained that claimant's account was approved for uncovered call options on January 20, 1993 and a letter with another series of risk disclosures was sent to the claimant. Respondents alleged that, in signing an amended options agreement, claimant asserted that her annual earnings were between \$25,000 to \$50,000 and that her net worth was approximately \$250,000.

Respondents maintained that claimant was provided with written trade confirmations and monthly account statements which reflected the activity in and the status of her account. Respondents further maintained that at no time while Toro serviced the accounts did claimant ever complain about the nature of her market activity. Respondents contended that in March of 1993, Pristavec closed claimant's account and instructed Toro to only accept liquidating orders, after claimant's account had suffered considerable losses.

Respondents maintained that claimant demanded investments with the potential for greater returns and she understood and was willing to assume greater risks in an effort to meet this objective. Respondents further maintained that any losses were the result of claimant's knowing and deliberate investment decisions.

Respondents also asserted a Cross-claim against Kahn for any liability assessed against them as a result of Kahn's acts or omissions.

RELIEF REQUESTED

Claimant requested that she be awarded:

- a. Compensatory damages in the amount of \$130,000.00 comprised of lost principal;
- b. Interest to be determined by the panel as a result of the loss of income sustained by claimant as a result of not having her money invested in prudent and suitable investments;
- c. Disgorgement of all commissions and mark-ups;

- d. Treble damages under RICO plus reasonable attorney's fees;
- e. Rescission of the securities purchased; and
- f. Such other and further relief as the panel deems just and proper.

Respondents Merrill Lynch, Toro and Pristavec requested that:

- a. the Statement of Claim be dismissed in its entirety;
- b. that the costs and expenses of the arbitration proceeding be assessed against the claimant;
- c. that, if need be, the Cross-Claim be granted;
- d. that, if need be, the Third Party Claim be granted; and
- e. that they be awarded such other and further relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On May 11, 1995, respondents filed a Second Amended Statement of Answer which included a Third Party Claim against Michael Murphy ("Murphy"). The panel determined that Murphy would not be a party to this proceeding.

The arbitration panel determined that Kahn was not served with the Statement of Claim in this matter and, therefore, the panel dismissed all claims and cross-claims against Kahn without prejudice.

The arbitration panel made the following rulings concerning Merrill Lynch, Toro and Pristavec, who did not file Submission Agreements with the NASD:

1. Pursuant to Section 1 of the Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Merrill Lynch was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Merrill Lynch pursuant to Section 12 of the Code of Arbitration Procedure.
3. The panel found that Toro and Pristavec were persons associated with a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Toro and Pristavec pursuant to Section 12 of the Code of Arbitration Procedure.
4. In view of (2) and (3) above, the panel found that Merrill Lynch, Toro and

Pristavec were required to file Submission Agreements with the NASD pursuant to Section 25(b) of the Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon these respondents, pursuant to Section 25(a) of the Code.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Toro and Pristavec be and hereby are jointly and severally liable and shall pay to claimant the sum of \$90,000.
2. Claimant's request for interest is hereby denied.
3. Claimant's request for attorney's fees is hereby denied.
4. Claimant's request for treble damages is hereby denied.
5. Each party shall bear their own costs.
6. All other claims are denied.

FORUM FEES

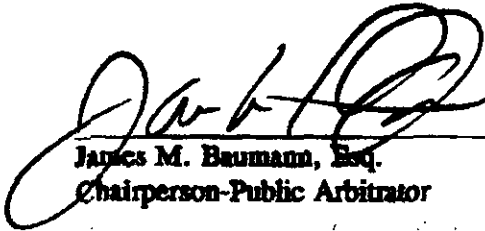
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

pre-hearing conference (full panel)	= \$ 750.00
7 hearing sessions x \$750.00	= \$5,250.00
non-refundable filing fee for cross-claim	= \$ 500.00

1. Claimant be and hereby is liable for the sum of \$3,000.00, representing one-half of the forum fees assessed for the pre-hearing conference and the hearings. Claimant previously deposited \$750.00 with the NASD and, therefore, claimant is liable and shall pay \$2,250.00 to the NASD.
2. Respondents Merrill Lynch, Toro and Pristavec be and hereby are liable for the sum of \$3,500.00, representing one-half of the forum fees assessed for the pre-hearing conference and the hearings and the non-refundable filing-fee for the cross-claim.

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

Arbitrators' Signatures



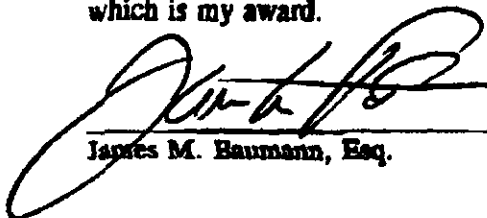
James M. Baumann, Esq.
Chairperson-Public Arbitrator

Roger S. Smith
Public Arbitrator

Donald J. Rasweiler
Industry Arbitrator

Date of decision: September 6, 1996

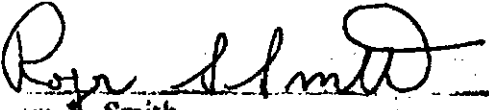
I, James M. Baumann, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



James M. Baumann, Esq.

Arbitrators' Signatures

James M. Baumann, Esq.




Roger S. Smith
Public Arbitrator

Donald J. Rasweiler
Industry Arbitrator

Date of decision: September 6, 1996

I, Roger S. Smith, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



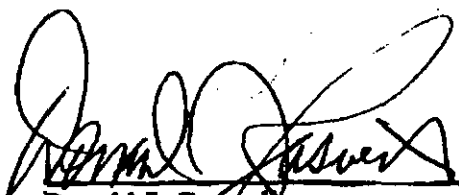
Roger S. Smith

Arbitrators' Signatures



James M. Baumann, Esq.
Chairperson-Public Arbitrator

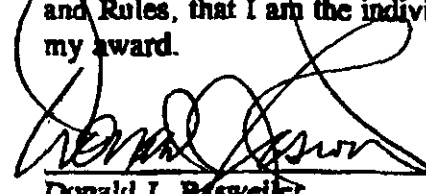
Roger S. Smith
Public Arbitrator



Donald J. Rasweiler
Industry Arbitrator

Date of decision: September 6, 1996

I, **Donald J. Rasweiler**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Donald J. Rasweiler