

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

H. Harold Hart

95-00085

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
David Middleton
Charles Hoffman
Pam Shine
Barry Doering

REPRESENTATION

Claimant, H. Harold Hart ("Hart") was pro se.

For Respondents Merrill Lych Pierce Fenner and Smith, Inc. ("Merrill"), David Middleton ("Middleton"), Charles Hoffman ("Hoffman"), Pam Shine ("Shine"), and Barry Doering ("Doering"): Charles Henderson, Esq. of Merrill, New York, New York.

CASE INFORMATION

Statement of Claim filed: January 6, 1995. Claimant's Submission Agreement signed on: January 4, 1995.

Statement of Answer filed on: February 9, 1995. Respondents' Submission Agreements signed on: February 3, 1995 by on behalf of Merrill, on February 6, 1995 by Middleton, February 2, 1995 by Hoffman, January 31, 1995 by Shine and on February 3, 1995 by Doering.

HEARING INFORMATION

On November 17, 1995, in Tampa, Florida, a hearing lasting one session was conducted.

CASE SUMMARY

Claimant, alleged that Hoffman contacted him and advised him that he had a 7% bond that would pay \$7,000.00 per year. Claimant assumed that the bonds were tax free because Hoffman

knew from his portfolio that Claimant only bought tax free bonds. Upon receipt of the confirmation indicating that the bonds paid only 5.25%, Claimant contacted Hoffman and cancelled the order but Respondents failed to do so and forced Claimant to sell the bonds at a loss.

Respondents denied all allegations of wrongdoing and alleged that: Claimant is an experienced bond investor; Hoffman discussed the purchase of Collateralized Mortgage Obligations with Claimant and advised him that the investment was selling at a discount. Claimant authorized the purchase of this investment, but before Hoffman transmitted the order, the Claimant called back to inquire about tax free bonds. Whereupon, Hoffman informed Claimant about a bond which paid 5.25% and was selling at a discount which the Claimant then purchased instead of the CMO. Respondents asserted various affirmative defenses including but not limited to: Failure to state a claim; authorization; ratification; and, market conditions caused Claimant's loss.

RELIEF REQUESTED

Claimant alleged that he lost \$9,325 and requested that he be given his money back plus triple damages in the amount of \$37,300.00 plus a \$125.00 service charge.

Respondents requested dismissal of the claim plus costs and expenses.

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 hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Middleton, Shine and Doering were dismissed, with prejudice, during the course of the hearing in this matter and the panel directs that these Respondents' CRD information be updated to reflect same.
2. The panel finds that Respondents Merrill and Hoffman are not liable and, therefore, the claims against them are hereby dismissed.
3. Respondents' requests for costs and expenses are hereby denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including any attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$400.00 (one session x \$400.00 per session).

1. Claimant is hereby assessed forum fees in the amount of \$200.00 for which the NASD shall retain the \$400.00 hearing session deposit previously paid by Claimant in full satisfaction thereof.
2. The NASD shall retain the \$120.00 nonrefundable filing fee previously paid by Claimant.
3. Respondents Merrill and Hoffman are hereby assessed, jointly and severally, forum fees in the amount of \$200.00 payable directly to the Claimant as a partial refund of his hearing session deposit.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

Public/Chairman

Jeffrey R. Edwards, Esq.

Gordon E. Hippner

Industry

James E. Garside

Public

Date of Decision: