

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Linda VanDyke POA for George W. Saunders

95-00231

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Rusty Clark

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 25, 1995, Claimant George Wade Saunders, who appeared Pro Se, alleged that in 1992 he opened an account with Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Rusty Clark with a deposit of \$25,000. Claimant further alleged that Respondent Clark represented that \$15,000 of Claimant's monies would be placed in a fixed account for safekeeping, and would be available for Claimant whenever he wanted it. Claimant contended that in 1993, Clark made an unauthorized purchase of stock with the \$15,000, which resulted in a loss to Claimant. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondents Merrill Lynch and Rusty Clark, through in-house counsel Kevin P. Kane, Esq., New York, New York, denied any and all allegations of wrongdoing or liability. Respondents stated that in May of 1992, Clark recommended the purchase of two Treasury Notes and MFS Intermediate Trust ("MFS"), a closed-end fund, consistent with Claimant's investment objective of monthly income. Respondents further maintained that Clark explained to Claimant that the shares of the fund would fluctuate and that Claimant indicated this was acceptable so long as he received monthly income. In addition, Respondents stated that at no time did Claimant state that money should be put aside. Respondents contended that Claimant instructed Clark to sell the two Treasury Notes in late 1992. Respondents further contended that in May of 1993 Clark informed Claimant that MFS had reduced its dividend, and Claimant decided to exchange MFS for Putnam Master Income Trust ("Putnam"), which subsequently declined in value. Respondents further maintained that Claimant received cash dividends, interest payments, and a realized gain on the sale of the Treasury Notes, which reduces the loss alleged in the Statement of Claim. Respondents asserted that Claimant was sent monthly account statements which reflected the value of his investments, and which reflected the

decline in the value of Putnam. As a result of the above, Respondents contended that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant, George Wade Saunders, requested \$3,849.11 in actual damages, plus interest, and \$4,000 in punitive damages.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Rusty Clark, requested that the Statement of Claim be denied, and that the cost of this proceeding be assessed against Claimant.

AWARD

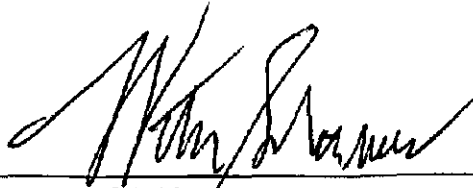
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, H. Victor Schwimmer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 23, 1995, by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on March 13, 1995, and by Respondent Rusty Clark on February 23, 1995.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Rusty Clark, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, George Wade Saunders, \$1,800.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. ("NASD") by the Claimant shall be retained by the NASD, Inc. Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Rusty Clark shall be and hereby are jointly and severally liable for and shall pay to Claimant George Wade Saunders \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **H. VICTOR SCHWIMMER, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read 'H. Victor Schwimmer', written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: *June 14, 1995*