

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Babcock & Wilcox, Employees
Federal Credit Union

95-00496

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

REPRESENTATION

For claimant Babcock & Wilcox, Employees Federal Credit Union ("claimant") appeared Christopher F. Swing, Esq. of the law firm Brouse & McDowell located in Akron, Ohio.

For respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("respondent") appeared Stephen M. Bales, Esq. of the law firm of Ziegler, Metzger & Miller located in Cleveland, Ohio.

CASE INFORMATION

Statement of Claim was filed on January 25, 1995. Claimant's Submission Agreement was signed on February 6, 1995.

Statement of Answer was filed May 3, 1995. Respondent's Submission Agreement was signed on May 3, 1995. Respondent's Counterclaim was filed on September 1, 1995.

HEARING INFORMATION

Hearing Sessions/Dates:	December 3, 1996	-	Two Sessions
	December 4, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers located in Cleveland, Ohio.

CASE SUMMARY

Claimant alleged that, on or about August 1, 1990, it authorized respondent to invest approximately \$150,000.00 in certain mutual funds. Claimant further alleged that its officers advised the representatives of respondent that the investments must comply with the federal regulations governing investments by a federal credit union. Claimant contended that respondent's representatives assured claimant that respondent had expertise concerning federal credit union regulations and that investing in mutual funds was not a prohibited investment.

Claimant asserted that it was subsequently notified by federal regulators that the investment in mutual funds was a prohibited investment pursuant to federal regulation and that it had to divest itself of the investments. Claimant further asserted that it informed respondent that the investments were prohibited and that it had to withdraw from the mutual funds, but that respondent charged a penalty for the early withdrawal.

Claimant alleged that respondent was negligent and/or failed to exercise reasonable care when it advised its officers that investing in mutual funds complied with federal regulations governing federal credit unions. Claimant further alleged that respondent breached its fiduciary duty when it gave incorrect advice concerning the investment in mutual fund and that respondent was strictly liable for the false information it supplied and the misrepresentations it made.

Respondent maintained that claimant's investment in the two mutual funds was the result of decisions made by claimant's own officers, employees, directors and other professional advisors. Respondent further maintained that respondent or its representatives did not advise claimant that it had expertise in determining what investments were permissible or prohibited for a federal credit union or that the investments at issue in fact complied with regulations governing federal credit unions.

As affirmative defenses, respondent maintained that claimant failed to state a claim for which relief may be granted; that claimant directed, approved, authorized and ratified each and every transaction in its account; that claimant was estopped from asserting any claims with respect to the transactions; that the claims were barred by the applicable statutes of limitation; and that claimant failed to mitigate any alleged damages. Respondent further maintained that it acted properly and in good faith with regard to claimant's account; that any alleged losses were the direct result of market conditions; that the transactions were suitable for and in accordance with claimant's stated invest objectives and financial condition; and that punitive damages were barred as a matter of law.

In its counterclaim respondent asserted that a deferred sales charge of two percent was applied to claimant's sale of one of the mutual funds. Respondent further asserted that the proper sales charge was three percent and that the balance is owed by claimant.

RELIEF REQUESTED

Claimant requested \$20,169.27, representing the withdrawal penalty for the Merrill Lynch Adjustable Rate Mortgage Mutual Funds, \$19,252.70, representing the withdrawal penalty for

the Keystone Adjustable Rate Mortgage Mutual Funds and \$5,000.00, representing the commissions paid to respondent.

Respondent requested the sum of \$908.16 together with interest at the rate of 10% per annum from January 7, 1993 and that it be awarded attorneys' fees, forum fees, surcharges and any costs incurred in connection this proceeding.

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

1. Respondent be and hereby is liable and shall pay claimant the sum of \$39,421.97, specifically excluding interest.

2. Respondent's counterclaim is hereby dismissed in its entirety.

3. Each party shall bear their own costs, including attorneys' fees, except that respondent is liable and shall pay claimant the sum of \$400.00 to reimburse claimant for the hearing session deposit previously paid to the NASD.

4. All other claims are hereby denied.

FORUM FEES

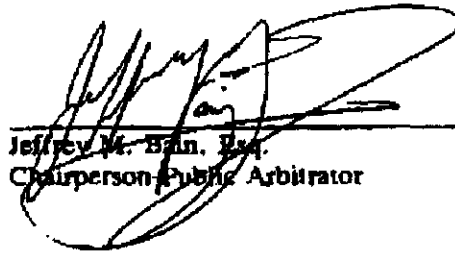
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$120.00 non-refundable filing fee paid by claimant and the \$500.00 non-refundable filing fee paid by respondent and have assessed the following forum fees:

4 hearing sessions x \$400.00 = \$1,600.00

Respondent be and hereby is liable for the sum of \$1,600.00, representing the total amount of forum fees assessed. Claimant previously deposited \$400.00 with the NASD and respondent previously deposited \$300.00 with the NASD. Accordingly, respondent is liable and shall pay to the NASD the sum of \$900.00, representing the total amount of fees outstanding.

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

Arbitrators' Signatures



Jeffrey M. Bain, Esq.
Chairperson, Public Arbitrator

Joseph W. Grossner
Public Arbitrator

Jay S. Ferrier
Industry Arbitrator

Date of Decision: February 4, 1997

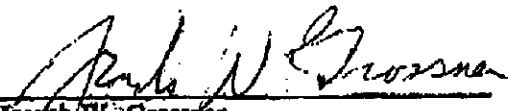
Jeffrey M. Bain
Public Arbitrator

Jay S. Ferrier
Industry Arbitrator

Date of Decision: February 4, 1997

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Jeffrey M. Bain, Esq.
Chairperson-Public Arbitrator


Joseph W. Grossner
Public Arbitrator

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Industry Arbitrator

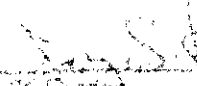
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Public Arbitrator



Jay S. Fackler
Industry Arbitrator



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