

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Priscilla D. Sewell

and

NASD Case Number 95-00580

Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Bobby W. Huff, Jr.

REPRESENTATION OF PARTIES

Claimant, Priscilla D. Sewell was represented by Anton E. Fraps, IV, Esq., Sole Practitioner, located in Houston, Texas.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bobby W. Huff, Jr. were represented by Robert J. Madden, Esq. of Gibbs & Bruns located in Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about January 30, 1995.

The Submission Agreement of Claimant, Priscilla D. Sewell was signed on January 18, 1995.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bobby W. Huff, Jr. on or about March 20, 1995.

The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on February 23, 1995 by John R. Cummings, First Vice President. The Submission Agreement of Bobby W. Huff, Jr. was signed on March 16, 1995.

HEARING INFORMATION

The hearing was held on August 21, 1995 in Houston, Texas for a total of two (2) sessions.

CASE SUMMARY

In the Statement of Claim, Priscilla D. Sewell ("Sewell") alleged that Bobby W. Huff ("Huff"), her registered representative employed by Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), failed to follow her instructions. As alleged, the Claimant instructed Huff in January of 1993 to sell all of her investment assets except for her Individual Retirement Account. Huff allegedly told Sewell that he would sell all her investment assets except for five shares of Merrill

Lynch Lee Acquisition Limited Partnership stock which he would sell at the end of the quarter since those shares could only be sold at the end of the fiscal quarter or on March 31, 1993. The Claimant contended that Huff did not sell the Lee Acquisition stock on March 31, 1993 yet sold the stock on June 30, 1993 or the end of the second fiscal quarter. The Claimant further contended, since the stock was worth about \$3,215.00 on March 26, 1993 and approximately \$3,545.00 on May 28, 1993 according to the account statements, that the stock was worth somewhere between the two amounts on March 31 1993, the date the stock should have been sold. After the shares were sold on June 30, 1993, the Claimant allegedly received \$1,575.00 for the sale. In addition, Sewell alleged that Merrill Lynch made misrepresentations to the Internal Revenue Service for they alleged sent a Schedule K-1 to Sewell and to the IRS on or about March 10, 1994 indicating that Sewell withdrew \$3,888.44 in taxable income from her Lee Acquisition Fund in June of 1993. Sewell asserted that Merrill Lynch paid Sewell \$2,313.44 less than what they represented to the Claimant and to the IRS what the shares were worth. Sewell made the following additional specific allegations against the Respondents including, but, not limited to, fraud, deceit, breach of contract, breach of fiduciary duty, breach of duty of good faith and fair dealing, negligence, gross negligence and deceptive trade practices.

In their Answer, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bobby W. Huff, Jr. denied all allegations of wrongdoing asserted by the Claimant. The Respondents alleged that the Claimant was fully informed that the value of the five units (the "Units") as stated on the account statements was an estimate of the net asset value of the Units established by the general partner of the Limited Partnership and may not reflect the price at which the Units could be sold.. The Respondents contended that the K-1 form was provided to the Claimant by the Limited Partnership and was accompanied by an instructional brochure which indicated which portions of the form needed to be reported to the IRS and which portions did not. The Respondents also asserted that the Claimant was given full credit in the amount of \$443.89 for any loss in sale proceeds caused by Merrill Lynch's inadvertent delay in selling the Units.

RELIEF REQUESTED

The Claimant, Priscilla D. Sewell, requested an award in the amount of \$2,313.44 in actual damages and \$7,686.56 in exemplary damages plus attorneys' fees, interest and expenses.

The Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bobby W. Huff, Jr., requested that all allegations asserted in the Statement of Claim be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

At the hearing, the Claimant made a motion to apply Texas law. The arbitrator decided to defer her ruling while allowing the parties to orally argue the motion and to continue with their presentations.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearings, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All allegations of wrongdoing and requests for damages in the Statement of Claim submitted by Priscilla D. Sewell are hereby denied in their entirety; and
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$200.00 per hearing session. There were two (2) sessions x \$200.00 = \$400.00 in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$75.00 and shall retain as forum fees the hearing session deposit in the amount of \$200.00 previously deposited with the NASD by the Claimant. Pursuant to Section 45 of the Code, the NASD shall retain the surcharge in the amount of \$100.00 previously deposited with the NASD by the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. The Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bobby W. Huff, Jr., are hereby liable for and shall pay to the NASD the sum of \$200.00 in forum fees. The Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bobby W. Huff, Jr., are liable for and shall pay to the Claimant, Priscilla D. Sewell, the amount of \$37.50 as reimbursement.

The NASD shall retain postponement fees in the amount of \$200.00 previously deposited with the NASD by the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

Arbitrator Signature

Dated

Martha P. Failing, Esq.
Martha P. Failing, Esq.
Public Arbitrator, Presiding Chair

August 8, 1995

Date served by the NASD: August 8, 1995