

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Helen G. Anderson

95-00626

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Judith Ann Zaleski

REPRESENTATION

For Claimant: Ted B. Edwards, Esq. of Smith, Mackinnon, Harris, Greeley, Bowdoin & Edwards, P.A., Orlando, FL.

For Respondents: Gregory J. Kelly, Esq. of Akerman, Senterfitt & Eidson, P.A., Orlando, FL.

CASE INFORMATION

Statement of Claim filed: February 7, 1995.

Amended Statement of Claim filed: December 22, 1995

Claimant's Submission Agreement signed on: January 26, 1995.

Joint Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Judith Ann Zaleski ("Zaleski") on: March 23, 1995.

Amended Answer filed: January 3, 1996.

Respondent, Merrill Lynch's Submission Agreement signed by John R. Cummings, First Vice President, on behalf of the firm on March 1, 1995.

Respondent, Zaleski's Submission Agreement signed on February 24, 1995.

HEARING INFORMATION

On October 2, and 3, 1996 and December 18, 1996, hearings lasting seven sessions were conducted in Tampa, FL.

CASE SUMMARY

Claimant alleged that prior to January of 1989, Zaleski opened a margin account for the Claimant at Merrill Lynch. Through this account the Claimant acquired up to 2,000 shares of Turner Broadcasting Systems, Class A common stock. Claimant further alleged the following: that Respondents never informed the Claimant of the nature and liabilities of a margin account; that Respondents never advised the Claimant of the suitability of concentrating her investment in a highly volatile stock on margin; that had Respondents advised the Claimant as to her suitability for the investments she would not have purchased Turner Broadcasting Systems stock on margin; while the Claimant was out of town because of a medical condition which Respondents were aware of, maintenance calls came due on the account and the account was sold out and Respondents were aware that Claimant never failed in the past to make maintenance calls whenever required, made no effort to apply for any extensions of time to make the calls due in Claimant's account; and, as a result of Respondents' failure to represent their fiduciary client's best interest to the best of their abilities, as was their duty, the Claimant suffered the loss of all her equity in the account. Claimant further asserted that on or about August 8, 1989, the Claimant brought to Respondents stock certificates representing a total of 400 shares of American Medical International, Inc. ("AMI"), along with a tender offer being made by IMA Acquisition Corp. to acquire those shares for \$28.00 per share and the Respondents thereafter willfully and negligently failed to tender the shares and as a result Claimant has sustained damages because of the alleged failure of Respondents to tender Claimant's 400 shares of AMI stock.

Respondents denied all the material allegations contained within the Statement of Claim with respect to Claimant's investment in both the Turner Broadcasting stock and AMI stock. Respondents specifically alleges the following as to Claimant's Turner Broadcasting stock and the AMI investment: that the Claimant had traded on margin for five years and had become fully aware of all margin account requirements; that the margin agreement allowed the Respondents to liquidate the account in their discretion without notice or demand; that all the order tickets and confirmation slips relating to Claimant's purchases of Turner Broadcasting stock clearly indicated that the trades were unsolicited; that the Claimant brought the AMI shares to Respondents and deposited the shares in her account to meet a maintenance call; that the Claimant also brought American Medical tender offer to Respondents and said she wanted to tender the stock at the \$28.00 per share price; and, that during the meeting with Claimant, Zaleski verified that the original tender offer price of \$28.00 had been amended to \$26.50 per share and against Zaleski's advice, the claimant decided to hold the American Medical stock to see if a higher offer came in.

Respondents alleged the following affirmative defenses: statute of limitations; estoppel; waiver; ratification; economic loss doctrine; comparative fault; and, failure to mitigate.

RELIEF REQUESTED

Claimant requested damages in excess of \$80,000.00, plus interest, costs, attorney's fees and such other relief as the Panel deemed just and proper.

Respondents requested dismissal of the Claim and an award of attorney's fees pursuant to

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

1. Respondents, Merrill Lynch and Zaleski, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for interest, costs, and attorney's fees are denied.
3. Respondents' request for attorney's fees is denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,500.00 (seven hearing sessions x \$500.00).

1. Claimant is hereby assessed \$1,750.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,250.00.
2. Respondent, Merrill Lynch, is hereby assessed \$1,750.00, payable to the NASD.
3. Respondent, Merrill Lynch, is still owing the Rule 10333 Member Surcharge of \$300.00.
4. The NASD shall retain the non-refundable filing fee of \$150.00 paid by Claimant.

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

Edwin B. Kagan, Esq.

/s/

Industry

David L. Walby

/s/

Public

Vernon E. Allen