

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Shirley A. Fialkowski  
Elizabeth Fialkowski

95-00662

Name of Respondent

Jimmy Burns

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc., on February 6, 1995, Claimants, Shirley A. Fialkowski and Elizabeth Fialkowski, who appeared Pro Se, alleged that Respondent, Jimmy Burns, an employee of Merrill Lynch, Pierce, Fenner & Smith, Inc., purchased 500 shares of AT&T Trust for Claimants' account, and 100 shares for each of Shirley A. Fialkowski's three children, in March of 1991. Claimants further alleged that she requested that Respondent buy Glaxo with \$15,000.00 from her CMA account but Respondent advised them to sell the AT&T shares instead of using the money in their CMA account because the AT&T shares "would never be worth more than \$30.00 each", and did not advise them that the AT&T shares would convert to common shares. Claimants contended that upon Respondent's advice, they sold the AT&T shares and divided the proceeds between Immunex, Syntex and Glaxo. Claimants further contended that through receipt of the children's statements, it was learned that the AT&T Trust had converted to common shares, and that Claimants' 500 shares would have converted to 375 common shares of AT&T and as a result of the above, Claimants have suffered a loss for which Respondent should be held liable.

Respondent, Jimmy Burns, through Kathleen Cromie, Esq., in-house counsel at Merrill Lynch, Pierce, Fenner & Smith, Inc., maintained that at on March 25, 1991, Claimants purchased 500 shares of AT&T Trust at \$27-5/8 per share and that the AT&T Trust was due to convert into no more than \$30.00 worth of AT&T common shares in February of 1992. Respondent further maintained that

Claimants were informed about this feature and knew the conversion ratio. Respondent contended that in November of 1991, Claimants requested that Respondent purchase pharmaceutical stocks, but did not want to use the cash from the CMA account. Respondent further contended that he advised Claimants to sell the AT&T shares, and explained that the AT&T Trust shares had a maximum value of \$30.00 worth of AT&T common shares at the time of conversion and as a result of the above, Respondent should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimants, Shirley A. Fialkowski and Elizabeth Fialkowski, requested actual damages in the amount of \$10,000.00.

Respondent, Jimmy Burns, requested that the claims of the Claimants Shirley A. Fialkowski and Elizabeth Fialkowski be dismissed in their entirety.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc., Code of Arbitration Procedure, a single Public Arbitrator, Joseph Carlisi, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 27, 1995, and by the Respondent on May 2, 1995.

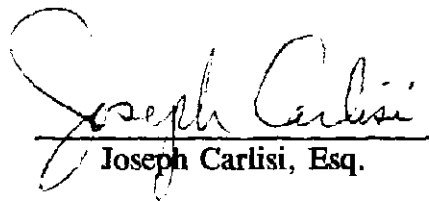
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants, Shirley A. Fialkowski and Elizabeth Fialkowski against the Respondent, Jimmy Burns, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. All other relief request are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc., by the Claimants, Shirley A. Fialkowski and Elizabeth Fialkowski, shall be retained by the NASD, Inc.

Page Three  
Award 95-0662

**AFFIRMATION**

I, Joseph Carlisi, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Joseph Carlisi, Esq.

Date of Decision: August 23, 1995