

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Steven L. and Susan M. Osser, JTWROS

95-00689

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Frank A. Dibenedetto

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 3, 1995, Claimants Steven L. and Susan Osser, JTWROS, who appeared Pro Se, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Frank A. Dibenedetto ("Dibenedetto"), did not properly monitor their account. Claimants further alleged that on September 28, 1992, they purchased a total of 10,924 shares of Alliance Mortgage Securities Income Class B ("the Fund") from Respondents. Claimants contended that Respondent Dibenedetto assured them that it was not important if they kept their shares in their MLPFS account or in the Fund and that he would be their Financial Consultant and review the account. Claimants further contended that they sold their investment in the Fund on October 17, 1994, and in the two years that they owned the Fund, Respondent Dibenedetto never called or wrote to them regarding their investment. Claimants alleged that they had a difficult time obtaining the proceeds from their sale of the Fund, because Respondent Dibenedetto was unavailable to them. As a result of the above, Claimants alleged that they have suffered a loss for which Respondents should be liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Frank A. Dibenedetto, through their representative, Christopher D. Cavuoti, Esq., New York, NY, maintained that Respondent Dibenedetto explained to the Claimants that although he would be available to answer any questions they might have concerning their investment, he could not closely monitor their assets unless they were held in MLPFS accounts. Respondents further maintained that Claimants were apprised of and understood the risks inherent to this investment. Respondents contended that Claimants were sent regular statements from the Fund and were thus able to stay apprised of the investment. As a result of the above, the Respondents maintained that they should not be held liable for Claimants' loss.

RELIEF REQUESTED

Claimants Steven L. and Susan M. Ossar, JTWROS, requested \$9,940.00 in actual damages, plus costs.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Frank A. Dibenedetto, requested that the claims of the Claimants be dismissed and that they be awarded costs.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Christopher Coward, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 31, 1995, by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on April 10, 1995 and by Respondent Frank A. Dibenedetto on March 13, 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 Steven L. and Susan M. Osser, JTWROS, against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Frank A. Dibenedetto, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Steven L. and Susan M. Osser, JTWROS, shall be retained by the NASD, Inc.

Affirmation

STATE OF NEW YORK

} SS:

COUNTY OF RENSSELAER

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



Signature of Arbitrator

DATE OF DECISION: August 30, 1995