

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimant

Janet R. Handler Revocable Trust  
Janet R. Handler Revocable Trust

95-00789

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
John W. Gideon

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REPRESENTATION

For Claimant Janet R. Handler Revocable Trust by Janet R. Handler, Trustee and Henry Handler, Trustee ("Claimant"): Charles Bagley, IV, Esq. of the law firm of Council, Baradel, Kosmerl & Nolan, Annapolis, MD

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and John W. Gideon ("Gideon"): Charles L. Henderson, Counsel Litigation Department, Private Client Group, Merrill Lynch, New York, NY

CASE INFORMATION

Statement of Claim filed: November 15, 1995.

Claimant's Submission Agreement signed on: February 14, 1995.

Joint Statement of Answer filed by Respondents Merrill Lynch and Gideon (collectively referred to as "Respondents") on: May 19, 1995.

Merrill Lynch's Submission Agreement executed by John R. Cummings, First Vice President, Assistant General Counsel on: May 18, 1995.

Gideon's Submission Agreement signed on: April 27, 1995.

HEARING INFORMATION

Hearing Date/Sessions: November 5, 1996 - two sessions

Hearing Location: DoubleTree Hotel, Baltimore, MD

### CASE SUMMARY

Claimant alleged, among other things, that Respondents failed to inform the trustees of the fourth supplemental offer made by Viacom, Inc. ("Viacom") to purchase outstanding shares of Paramount Communications, Inc. ("Paramount"). Claimant alleged that the fourth offer to purchase Paramount was submitted on October 25, 1993 and was to expire on February 14, 1994 but was later extended until March 1, 1994. Claimant was the owner of 686 shares of Paramount which were held by it in "street name". Claimant alleged that the fourth supplemental offer became the final and winning offer. Claimant alleged that the trustee was unaware of this offer until her husband, Henry Handler ("Mr. Handler") called Gideon to find out why the Paramount stock had gone from \$86 to \$40. Claimant alleged that Gideon was unable to answer and told Mr. Handler he would call him back. Claimant alleged that on March 9, 1994, Mr. Handler called Viacom and learned for the first time of the fourth supplemental offer by Viacom to purchase Paramount at \$107 per share. Claimant alleged that its CMA Account, as well as Respondents' duty as its investment advisor, required Respondents to inform Claimant of this fourth supplemental offer, which they failed to do. Claimant alleged that because of Respondents failure to advise its client of this supplemental offer, it was unable to take advantage of this offer of selling 51% of its shares for a price of \$107. Claimant alleged that Respondents committed federal securities fraud, negligence, and breach of contract.

Respondents categorically denied all allegations of wrongdoing asserted by Claimant. Respondents maintained that the Claimant was sent all written notices of tender offers for Paramount by Merrill Lynch and that their broker, Gideon, advised Mr. Handler about the tender offers made for Paramount until Mr. Handler told Gideon that Claimant was not interested in tendering the shares of Paramount. Respondents maintained that Merrill Lynch continued to send all written tender notices for Paramount to Claimant. Respondents maintained that Mr. Handler placed an order to tender Paramount shares in November 1993, canceled the order to their shares because of tax considerations and never placed another order to tender their Paramount shares. The following affirmative defenses were maintained by Respondents: Claimant's claim is barred by the applicable Statutes of Limitation; the claim fails to state a claim upon which relief can be granted; the claim fails to particularize facts establishing a legal theory under which Respondents could be held liable for the alleged damages; Claimant is barred from recovery because it directed, authorized, consented to acquiesced in, and/or ratified all transactions in the account; Claimant made all of the investment decisions with regard to the account and any losses which may have been suffered by Claimant were caused by the investment decisions made by Claimant and due to market conditions outside the control of Respondents; all transactions were separately confirmed in writing and were reflected on the monthly statements; Claimant's damages are speculative; and, Claimants failed to mitigate its damages, if any.

### RELIEF REQUESTED

In its pleading, Claimant requested judgment against Respondents Gideon and Merrill Lynch in the amount of \$30,000 and costs of this proceeding.

In their pleading, Respondents requested that Claimant's claim be dismissed and that they be awarded costs and expenses incurred in defense of this action.

**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 original(s) remain on file with the NASD.

Prior to the hearing, the parties agreed to the joinder of Henry Handler as a trustee for Claimant to the action.

**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. That Claimant's claim is denied in their entirety.
2. That the parties shall bear their respective costs including attorneys' fees, except as forum fees are specifically addressed below.

**FORUM FEES**

Pursuant to Rule 10322 of the Code of Arbitration Procedure, the following forum fees are assessed.

2 sessions x \$400 = \$800

Forum Fees Assessed Against: 50% against Claimant and 50% Respondents.

Claimant is assessed forum fees in the amount of \$400, however, Claimant is entitled to offset this amount with its hearing session deposit of \$400 so that no additional fees are due from Claimant. Respondents are jointly and severally assessed forum fees in the amount of \$400.

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

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DATE

12/18/96

Concurring Arbitrators' Signatures



Marvin Elster, Chairperson, Public Arbitrator

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Gloria F. Smith-Hill, Panelist, Public Arbitrator

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James M. Metcalf, Panelist, Industry Arbitrator

Date Award Served by the NASD Regulation:

December 23, 1996

DATE

Concurring Arbitrators' Signatures

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Marvin Elster, Chairperson, Public Arbitrator

12/3/96

Gloria F. Smith-Hill

Gloria F. Smith-Hill, Panelist, Public Arbitrator

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James M. Metcalf, Panelist, Industry Arbitrator

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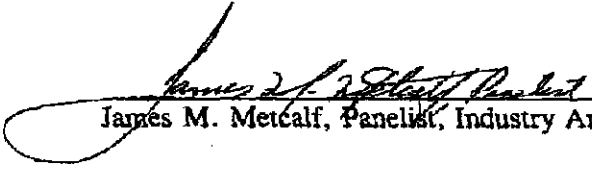
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