

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William E. and Yvonne D. Connell, JTWROS

95-00907

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
William A. Eichinger

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 21, 1995, Claimants William E. and Yvonne D. Connell, JTWROS, who appeared Pro Se, alleged that Respondent William A. Eichinger ("Eichinger"), of the Respondent firm Merrill Lynch, Pierce, Fenner & Smith, Inc., spoke with the Claimants in 1990 or 1991. Claimants alleged that they told Respondent that they wanted to safely invest \$12,000.00 over a two (2) year period. Claimants further alleged that Respondents urged them to invest in U.S. Surgical Corp. ("USSC"), because it was a strong Company. Claimants stated that they purchased 125 shares of USSC on July 23, 1992, and that the price of USSC dropped so they sold their shares, causing a loss of \$573.00 in just 10 days. Claimants further alleged that on July 23, 1992, they received a USSC on-line report and felt that the investment was safe, so on August 4, 1992, they bought back USSC shares. Claimants asserted that the Respondents did not discourage them from this purchase. Claimants contended that due to poor information from Respondents, and they have suffered a loss for which Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William A. Eichinger, through their representative and in-house counsel, Paul L. Fitzgerald, Esq., New York, New York, maintained that on July 23, 1992, Claimants contacted Respondent Eichinger and told him that they wanted to invest in USSC, and that they had a friend who made a lot of money in USSC. Respondents maintained that they told Claimants that USSC was speculative and was "above average", in the short term and a "buy", in the longer term. Respondents further

maintained that they informed Claimants of this and that Claimants still wanted to purchase USSC, so Respondent Eichinger informed Claimants to put a stop order on the stock, to prevent further losses for Claimants. Respondents further contended that the sale "kicked in" on July 31, 1992, and they informed Claimants of it. Respondents asserted that Claimants phoned Respondent Eichinger on August 4, 1992 to purchase more USSC and that he suggested another stop loss order and Claimants' agreed. Respondents maintained that on August 10, 1992, the Claimants phoned Respondent Eichinger, and told him to cancel the stop loss order, and that although USSC continued to drop in price, the Claimants chose to remain invested and did not appear to be overly concerned about the USSC drop. Respondents further maintained that Claimants phoned them in June of 1993, and that Claimants did not blame Respondent Eichinger, for their loss, but that they relied on Merrill Lynch, Pierce, Fenner & Smith, Inc.'s research and wanted to be reimbursed for losses. Respondents maintained that they referred Claimants to Mr. Reynauld Howe, the branch Administrative Manager, who rejected Claimants' request for reimbursement. Respondents further maintained they acted in a commercially reasonable manner towards Claimants and all actions complained of were done in accordance with the express authorities of direction, and permission of the Claimants, and therefore, they should not be held liable in this matter.

RELIEF REQUESTED

Claimants William E. and Yuvonne D. Connell, JTWROS, requested \$9,029.21 in actual damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William A. Eichinger, requested that the claims of the Claimants be dismissed in their entirety and that costs be assessed against the Claimants.

AWARD

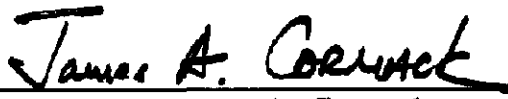
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James A. Cormack, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 14, 1995 and by the Respondent William A. Eichinger on March 20, 1995 and by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on April 3, 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 William E. and Yuvonne D. Connell, JTWROS, against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William A. Eichinger, 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 William E. and Yuvonne D. Connell, JTWROS, shall be retained by the NASD, Inc.

AFFIRMATION

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



James A. Cormack

DATE OF DECISION: August 28, 1995