

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Annie J. Stevens, and
William J. Stevens,

Claimants,

v.

No. 95-00922

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
and George Eubank,

Respondents.

REPRESENTATION OF PARTIES

Annie J. Stevens, and William J. Stevens ("Claimants") were represented by Daniel L. Goldberg, Esq., St. Charles, Missouri.

Merrill Lynch, Pierce, Fenner & Smith, Inc., and George Eubank ("Respondents") were represented at the hearing by Gordon D. Gee, Esq., of Seigfreid, Bingham, Seltzer & Gee, Kansas City, Missouri.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about January 6, 1995. Claimants' Submission Agreement was signed on January 6, 1995.

Respondents' Statement of Answer was filed on or about May 12, 1995. Respondents' Submission Agreement was signed on May 12, and April 6, 1995, respectively.

HEARING INFORMATION

The hearing was held on February 13, 1996 in Kansas City, Missouri for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that: Respondents made inappropriate and unsuitable investments in Claimants' account; they did not know or understand the risks of loss involved in the particular investments selected by the respondents; the individual respondent engaged in planned deception as a means of making a sale; the individual respondent had promised no sales charges, that there would absolutely be no loss of principal and that the investments were sound and profitable; the individual respondent made statements that concealed risks and omitted certain necessary facts; and that respondents employed fraudulent marketing practices. Claimants' allegations arose out of MFS Intermediate Income Trust.

Unless otherwise admitted therein, Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: The Statement of claim fails to state a claim against respondents upon which relief can be granted; Claimants are estopped by their conduct from asserting against Respondents any and all claims alleged in the Statement of Claim; Claimants have, by their conduct, waived any claims they might have had against Respondents which may be alleged in the Statement of Claim; Claimants, acting with full knowledge and notice of the facts, ratified, approved, accepted, acquiesced and confirmed in all respects the acts complained of in the Statement of Claim; Respondents are not liable to claimants in any amount because, at all times relevant herein, they acted properly, in good faith and in a commercially reasonable manner with respect to Claimants' account; Claimant assumed the risks of the investments which they made through Respondents and through their unilateral decisions regarding when to purchase and whether to hold such securities; all transactions upon which Claimants base their alleged claims against Respondents were conducted in accordance with all applicable Exchange rules and regulations; Claimants are not entitled to any recovery because their alleged claims are barred by the equitable doctrine of unclean hands; and Claimants have failed to mitigate their damages.

RELIEF REQUESTED

Claimant requested an award: For compensatory damages in the approximate amount of \$22,516.34; interest for three (3) years at 12% annually (\$8,105.88); punitive damages in the amount of three (3) times the sum of compensatory damages or \$67,549.02; costs and expenses of the proceeding of approximately \$2,000; being a total request for \$100,171.24 plus reasonable attorneys' fees and filing fees and such other relief as this panel deems just and appropriate.

Respondent requested that the claims should be dismissed in its entirety, together with such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

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:

Respondents are liable for, and shall pay to the Claimants the sum of \$4,604.29 as satisfaction of their claims made herein. Claimants' request for an award of punitive damages is denied with prejudice.

Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimants.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by Merrill Lynch, Pierce, Fenner & Smith, Inc..

Additional forum fees in the amount of \$1,500 are assessed against the Respondents.

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

Dated:

Mark S. Foster
Mark S. Foster
Public Arbitrator, Presiding Chair

s/s

March 13, 1996

Sidney Keltner
Sidney Keltner
Public Arbitrator

s/s

March 14, 1996

Jeff Breault
Jeff Breault
Industry Arbitrator

s/s

March 14, 1996