

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Marilyn C. Palmersheim

95-01037

Name of Respondent

Lori A. Eckstein

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 27, 1995, Claimant, Marilyn C. Palmersheim, who appeared Pro Se, alleged that Respondent, Lori A. Eckstein, executed transactions for her account without authorization. Claimant further alleged that on February 24, 1994, the Respondent purchased for her account \$7,500.00 of Merrill Lynch Americas Income Fund and \$7,500.00 of Merrill Lynch Strategic Dividend Fund without authorization. Claimant contended that Respondent represented to her that, because she was more than 59 1/2 years old, if she ever wanted to sell her funds the sales charges would be waived. Claimant further contended that, contrary to Respondent's representation, she was charged upon the sale of her funds. Claimant alleged that she paid unnecessary commissions for trades which were not authorized. As a result of the above, Claimant alleged that she has suffered a loss for which Respondent should be held liable.

Respondent, Lori A. Eckstein, through her representative, Christopher D. Cavuoti, Esq., of Merrill Lynch, Pierce, Fenner & Smith, Inc., located in New York, NY, maintained that on February 24, 1994, she telephoned the Claimant in order to notify her that Merrill Lynch's research analysts were predicting an increase in interest rates. Respondent further maintained that, after carefully explaining the commission charges that would be incurred on a sale to the Claimant, Claimant instructed Respondent to sell her two bond funds, ACM Managed Income Fund ("AMF") and the Senior High Income Portfolio Fund ("ARK"). Respondent contended that Claimant advised her that she wanted to invest the sale proceeds without incurring a fee and Respondent explained that class "B" shares of Merrill Lynch Mutual Funds would have no up-front fees and would not impose a contingent deferred sales charge if she liquidated because she was over 59 1/2 years of age. Respondent further contended that all transactions in the account were discussed in advance with the Claimant and were fully authorized by her and all fees and charges were reviewed with Claimant prior to receiving her approval for a purchase or sale. As a result of the above, Respondent maintained that she should not be held liable.

**RELIEF REQUESTED**

Claimant, Marilyn C. Palmersheim, requested \$6,100.00 in actual damages, plus \$2,000.00 in attorney's fees.

Respondent, Lori A. Eckstein, requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Bruce J. Simpson, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant, Marilyn C. Palmersheim, on February 21, 1995, and by the Respondent, Lori A. Eckstein, on July 18, 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. Respondent, Lori A. Eckstein, is liable and shall pay to the Claimant, Marilyn C. Palmersheim, \$1,050.00 in actual damages.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Marilyn C. Palmersheim, shall be retained by the NASD, Inc. Respondent, Lori A. Eckstein, is liable and shall pay to the Claimant, Marilyn C. Palmersheim, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

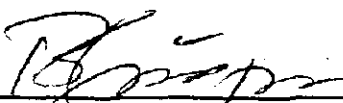
STATE OF

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SS:

COUNTY OF

I, BRUCE J. SIMPSON, 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.

  
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Signature of Arbitrator

DATE OF DECISION: October 31, 1995