

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harold L. & Vivian C. Kemp

95-01073

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Patricia Prucha Slagle

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 2, 1995, Claimants Harold L. and Vivian C. Kemp ("Claimants"), through their representative Richard W. Groner, Esq., of the law firm Groner, Schieb & Currie, alleged that respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") engaged in fraudulent concealment and convinced them to purchase unsuitable investments for their IRA account. Claimants further alleged that respondent Patricia Prucha Slagle ("Slagle") misrepresented the products she solicited and sold to them while at Merrill Lynch. Claimants also alleged that they informed Slagle that they were retired, and were interested in investing their limited resources in safe, secure income products. Claimants asserted that Slagle solicited them to buy AMFAC/JMB Hawaii, Inc., by stating that it was "the greatest investment they would ever make in their life". Claimants further asserted that the sale was specifically kept in their IRA account. Claimants also asserted that in April 1993, Slagle again solicited them to purchase Metric Income Trust Series, Inc, promising them that this product would pay no less than 10% per year. Claimant contended that this sale was also kept in their IRA account. Claimants further contended that products Slagle sold to them produced the highest paid commissions to both the broker/dealer and to the registered representative, and they were also unsuitable for a retired couple. Claimants further contended that Merrill Lynch misrepresented the true value of the products on their monthly reports. Claimants also contended that Merrill Lynch remained as a custodian of their IRA account, with a continuing duty to supervise the products held in that account for suitability. Claimants contended that due to the wrongdoing of the Respondents, they have suffered damages for which the Respondents should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), through its representative and in-house counsel Christopher D. Cavuoti, maintained that claimants received a prospectus at the time of their purchase. Respondent further maintained that the prospectus described in detail the features and risks associated with Amfac/JMB Hawaii Inc. ("JMB") Certificates of Land Appreciation ("COLAs") units. Respondent also maintained that claimant received annual and quarterly reports for the duration of their investment, from the management of Amfac/JMB, describing how the

COLAs were faring. Respondent contended that the claimants knowingly and expressly ordered, approved, authorized, participated in and ratified the acts and transaction complained of and upon which recovery is sought.

Respondent Patricia Prucha Slagle failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Harold L. and Vivian C. Kemp requested \$2,730.00 in actual damages; \$9,000 in interest; attorneys' fees; and reimbursement of the filing fee.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated requested that the Claim of the Claimants be dismissed; and costs of this proceeding being assessed against claimant.

Respondent Patricia Prucha Slagle failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD, Inc. Code of Arbitration Procedure, Respondent Patricia Prucha Slagle was served by regular mail and given an opportunity to respond, which she failed to do. In addition, service of an overdue answer and a notification of the Arbitrator's identity was effected upon Respondent Patricia Prucha Slagle, as evidenced by the signed signature card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Patricia Prucha Slagle had notice of the claim; was required to submit to this arbitration proceeding; and is, therefore, bound-by the arbitrator's ruling and determination.

AWARD

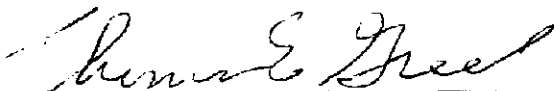
Pursuant to Section 13 of the NASD, Inc. of Arbitration Procedure, a single Public Arbitrator, Thomas E. Greef, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by Claimants Harold L. and Vivian C. Kemp on February 9, 1995; Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated on May 9, 1995; and not by Respondent Patricia Prucha Slagle, as required by Sections 12 and 13 of the NASD, Inc. Code of Arbitration Procedure.

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 Patricia Prucha Slagle is liable and shall pay to Claimants Harold L. and Vivian C. Kemp \$2,730.00 in actual damages.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. is liable and shall pay to Claimants Harold L. and Vivian C. Kemp simple interest at the rate of 6% per annum on \$20,000 from February 13, 1989 to February 13, 1995.
3. Claimants' request for attorneys' fees have been denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by Claimants Harold L. and Vivian C. Kemp shall be retained by the NASD, Inc. Respondent Patricia Prucha Slagle is liable and shall pay to the Claimants \$150.00 as reimbursement for the filing fee.

AFFIRMATION

I, **Thomas E. Greef**, 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.



Thomas E. Greef

Date of Decision: October 8, 1996