

NASD AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.****In the Matter of the Arbitration Between****Name of Claimants****Joan and Vern Trombley****95-01369****and****Name of Respondents****Scott and Ivars Kauls****REPRESENTATION OF PARTIES****Joan and Vern Trombley ("Claimants") appeared pro se.****Scott and Ivars Kauls ("Respondents") were represented by James K. Langdon, II, Esq. of Minneapolis, Minnesota.****CASE INFORMATION****The Statement of Claim was filed on or about March 20, 1995. Submission Agreement of Claimants, Joan and Vern Trombley was signed on March 13, 1995.****A Joint Statement of Answer was filed by Respondents, Scott and Ivars Kauls on or about July 6, 1995. Submission Agreement of Respondents was signed on May 22, 1995.****HEARING INFORMATION****The hearings were held on October 10th, 1995 in Minneapolis, Minnesota for a total of two (2) sessions.****CASE SUMMARY**

Claimants, Joan and Vern Trombley are a retired couple. Respondents, Ivars and Scott Kauls are registered representatives at Merrill Lynch in Minneapolis, Minnesota.

Claimants alleged that Respondents negligently recommended and implemented an inappropriate investment strategy, inconsistent with Claimants' investment objectives. Specifically, Claimants alleged that Claimants' previously balanced portfolio was placed into a non-diversified portfolio, consisting of 85% equities and mutual funds.

Claimants also alleged that Respondents' recommendation of the Merrill Lynch "Asset Power" account was misleading and inappropriate. The Asset Power Account provides an alternative to paying for trades on a straight commission basis, by allowing clients to pay fees based on a percentage of their assets. Claimants alleged that Respondents caused them to confuse the Asset Power account with a management account, and that the fee relating to the account was inappropriate given the nature of their investment objectives.

Finally, Claimants alleged that they were treated unfairly by Merrill Lynch. Specifically, Claimants alleged that after bringing their concerns to the attention of the Administrative Manager of Merrill Lynch they were asked to close and transfer their account.

Respondents denied the allegations set forth in the Statement of Claim. Respondents alleged that the strategy recommended to the Claimants was, in fact, well suited to the Claimants' investment objectives, and Respondents were reasonable in recommending it. Respondents alleged that the strategy was based on Merrill Lynch research, and was neither risky nor lopsided.

Respondents further alleged that no misrepresentations were made concerning the nature of the Asset Power account. Respondents alleged that they fully explained the account, the Claimants authorized every transaction in the account, and the Claimants signed a written agreement fully explaining the nature of the account.

Finally, Respondents alleged that Merrill Lynch acted entirely properly in asking the Claimants to transfer their account, after a series of discussions involving allegations of wrongdoing.

RELIEF REQUESTED

Claimant requested an award in the amount of \$100,000 for negligence on the part of the Respondents.

Respondent requested that the claim asserted against it be denied in its entirety.

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 originals remain on file with the NASD.

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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. Claimants' claim is dismissed.
2. Forum fees and costs are to be split equally between Claimants and Respondents.

FORUM FEES

Forum fees are calculated at the rate of \$ 500.00 per hearing session. There were two (2) sessions x \$ 500.00 = \$ 1000.00 in forum fees. Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$ 150.00 and shall retain as forum fees the hearing session deposit in the amount of \$ 500.00 previously deposited with the NASD by the Claimant. NASD shall retain the \$300.00 Section 45 member surcharge previously deposited with the NASD by the Respondents. Respondents shall pay to the NASD, the sum of \$500.00 for the remaining forum fees.

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

Concurring Arbitrators:

Thomas J. Gmeinder
Thomas J. Gmeinder, Esq.
Presiding Chairperson
Public Arbitrator

November 29, 1995
Dated

James P. Trainor
James P. Trainor, Jr.
Public Arbitrator

December 4, 1995
Dated

Lawrence Furman
Lawrence Furman
Industry Arbitrator

November 29, 1995
Dated

For NASD Use Only
Date of Decision: December 14, 1995