

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Karl F. Provost

95-01843

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
William Bruce Dredge

REPRESENTATION

Claimant, Karl J. Provost ("Claimant"), appeared Pro Se.

For Respondents Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch") and William Bruce Dredge ("Dredge"), collectively ("Respondents"), appeared Charles L. Henderson, Esq., in house counsel for Merrill Lynch, located in New York, New York.

CASE INFORMATION

Statement of Claim filed on April 17, 1995.

Claimant's Submission Agreement signed on April 11, 1995.

Joint Statement of Answer was filed by Respondents on June 29, 1995.

Respondent Merrill Lynch executed a Submission Agreement on June 27, 1995.

Respondent Dredge executed a Submission Agreement on June 27, 1995.

HEARING INFORMATION

Hearing Dates/Sessions June 11, 1996 - 2 Sessions

CASE SUMMARY

Claimant alleged on January 5, 1994 he contacted Respondent Dredge, a representative of Respondent Merrill Lynch and contracted with Dredge to act as his investment advisor. The Claimant alleged that he was relying on Dredge to make transactions in his best interest, to protect his investment portfolio from waste and theft, and to advise him in a professional manner. The Claimant alleged that on January 25, 1994 he gave Dredge a check for \$70,000.00 which represented his life savings and an inheritance.

Claimant contended that he told Dredge that he wanted to employ a "trip-line," which is a schedule of stocks to be purchased at specific prices and amounts. Specifically, Claimant alleged that he wanted to purchase 4,000 shares of Rembrandt Corporation if the stock traded at \$4.90 and additional shares as the stock reached lower price targets. Claimant asserted that on April 11, 1994, Rembrandt Corporation reached \$4.66 which triggered the trip-line at \$4.90.

Claimant alleged that Dredge told him that Merrill Lynch does not make loans for investments and thereby prevented him from buying shares of Rembrandt Corporation according to his trip-line. Additionally, Claimant alleged that Dredge sold the idea of the trip-line to some of his customers and generated commissions in so doing.

Claimant alleged that Dredge breached his fiduciary duty, made false statements to him, and committed the act of self-dealing. Claimant further alleged that Merrill Lynch should also be held liable for Dredge's actions as a "controlling person" since Dredge was acting within the scope of his duties.

Respondents maintained that in the Fall of 1993, Claimant made an unsolicited call to the Merrill Lynch office located in Lawrenceville, New Jersey and informed Dredge that he wanted to purchase South African stocks. Respondents contended that Dredge informed Claimant of the risks involved in investing in South

African stocks and that he needed an account with Merrill Lynch in order for Dredge to execute trades.

Respondents maintained that Claimant opened an account, deposited \$70,000.00 in January of 1994, and purchased 2,000 shares of Premier Group RGB and 5,000 shares of Rembrandt Group on an unsolicited basis. Respondents contended that in April of 1994 Claimant visited Dredge and told him that he wanted to purchase more shares of South African stocks as prices declined.

Respondents contended however, that Claimant gave no specific orders to purchase Rembrandt Group and that Claimant had no funds available to make purchases other than approximately \$4,000.00 in a money market fund. Respondents further maintained that upon Claimant's inquiry into a loan to purchase securities, Dredge informed him that the stocks in his account were not marginable and that Merrill Lynch Credit Corporation would not extend a loan using Claimant's real estate for the purchase of the South African stocks.

Finally, Respondents maintained that even though Claimant had \$4,000.00 available to him and another \$126,189.00 that was subsequently deposited in his account in August of 1994, he made no additional purchase of Rembrandt Group stock. Respondents also contended that Dredge did not present any alleged trip-line scheme to his other customers.

RELIEF REQUESTED

Claimant requested relief as follows:

1. \$12,740.00 in compensatory damages;
2. Costs of Arbitration; and
3. Such other relief as the Panel may deem fit.

Respondents requested the claim be dismissed in its entirety and they be awarded costs and expenses incurred in defense of the action.

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 original remain 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:

1. All claims be and hereby are denied;
2. All parties shall bear their respective costs, including attorney's fees; and,
3. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Hearing Session Fees \$600.00 (2 x \$300.00)

Total Forum Fees \$600.00

1. Claimant is assessed \$300.00 representing one-half of the total forum fees due, less \$300.00 previously paid leaving \$0.00 due.
2. Respondent Merrill Lynch is assessed \$300.00 representing one-half of the total forum fees due. Respondent Merrill Lynch be and hereby is liable and shall pay to the NASD the sum of \$300.00.

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

ARBITRATOR'S SIGNATURES

George R. Freund

I, George R. Freund, do hereby affirm that this is my decision in the above-captioned matter.

Date of Decision: July 23, 1996

Barry Feiden

I, Barry Feiden, do hereby affirm that this is my decision in the
above-captioned matter.

Date of Decision: _____

David Levy, Esq.

I, David Levy, do hereby affirm that this is my decision in the
above-captioned matter.

Date of Decision: _____

The following Arbitrator(s) concur(s) with the award:

none

The following Arbitrator(s) dissent(s) with the award:

none