

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Paul and Barbara M. Gelner as Trustees for the
Paul and Barbara Gelner Trust

95-02052

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 28, 1995, Claimants Paul and Barbara M. Gelner as Trustees for the Paul and Barbara Gelner Trust ("Claimants") who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"), through its representative, Doug Andrews ("Andrews"), neglected to inform them that the period to trade commission free, was due to expire. Claimants further alleged that on December 29, 1994 they were told they had two more weeks to trade commission free, but that on January 3, 1995 Andrews called as said that the commission free period had run out. Claimants contended that Andrews then offered a 35% reduction of the normal rate. Claimants further contended that had they known that the commission free trading was due to expire they would have sold 200 shares of Egghead, 200 shares of Horizon Healthcare, 200 shares of Indonesian Satellite and 200 shares of Tele Danmk at an earlier date, thereby avoiding a decline in market prices. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondent should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its representative and in-house counsel, Christopher D. Cavuoti, Esq., maintained that on October 7, 1994, the Claimants upgraded their account with Respondent to a Cash Management Account ("CMA") and selected the Asset Power program with this account. Respondent further maintained that the \$100.00 annual fee for this account was waived by Andrews. Respondent contended that Asset Power is a pricing alternative, which charges an asset-based fee allowing for a fixed amount of trades within a fixed period of time, instead of a transaction-based price structure. Respondent further contended that from October 7, 1994, through December 30, 1994, Claimants made 14 trades free of commission. Respondent maintained that in January of 1995, Andrews informed Claimants that their trades would require an additional quarterly Asset Power program fee and that they decided to discontinue the Asset Power program. Respondent further maintained that Claimants requested that they be given the opportunity to make 4 more trades commission free to which the Respondent agreed because of the misunderstanding. Respondent contended that Claimants then wanted additional losses to be paid. Respondent further contended that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimants Paul and Barbara M. Gelner as Trustees for the Paul and Barbara Gelner Trust, requested \$1,645.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., requested that the claims of the Claimants be dismissed.

AWARD

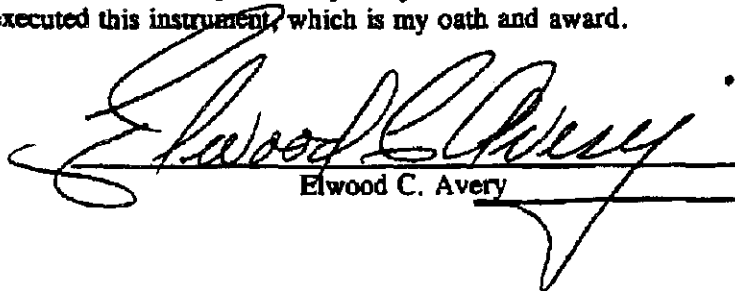
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator Elwood C. Avery, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 25, 1995, and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on August 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. The Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable and shall pay to the Claimants Paul and Barbara M. Gelner as Trustees for the Paul and Barbara Gelner Trust, \$519.00 in actual damages.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Paul and Barbara M. Gelner as Trustees for the Paul and Barbara Gelner Trust, shall be retained by the NASD, Inc. The Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable and shall pay to the Claimants Paul and Barbara M. Gelner as Trustees for the Paul and Barbara Gelner Trust, \$50.00 as reimbursement of the filing fee.

AFFIRMATION

I, **ELWOOD C. AVERY**, 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.


Elwood C. Avery

DATE OF DECISION: November 27, 1995