

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Robin Viverito

95-03020

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Brandon Bond

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on June 20, 1995, Claimant Robin Viverito, who appeared Pro Se, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Brandon Bond ("Bond"), did not adequately explain an investment which was sold to her. Claimant further alleged that she began dealing with Respondent Bond, a representative of Respondent MLPFS, in September, 1992. Claimant contended that in June, 1993, Bond advised her of the Dow 5 Theory and in January, 1994, Bond recommended that she switch to the Dow 10 theory. Claimant further contended that pursuant to Bond's recommendation she invested in three funds: Select 10 Int'l Series - Hongkong, Select 10 Int'l UK, and Select 10 Equity Income Funds for a total investment of \$23,998.57. Claimant alleged that during February, 1995 she found out that her three funds were automatically sold by MLPFS which resulted in a loss of \$4,250.84. As a result of the above, Claimant alleged that she has suffered a loss for which the Respondents should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc., through its representative and in-house counsel, Christopher D. Cavouti, Esq., maintained that its records indicate that Claimant received prospectuses for all three funds at the time of purchase. Respondent further maintained that Claimant's confirmation tickets disclosed the sales charge and the prospectuses stated that "the Fund will invest for a period of about one year". Respondent contended that on February 18, 1995, after receiving valuable consideration, Claimant signed a Confidential General Release. As a result of the above, Respondent MLPFS maintained that it should not be held liable.

Respondent Brandon Bond, who appeared Pro Se, maintained that he clearly explained the Select Ten Portfolio series strategy to the Claimant. Respondent further maintained that he mailed a two page sales piece on the Select Ten Portfolios, which explained the strategy and disclosed that the portfolio was sold every year, more than once to the Claimant. Respondent contended that Claimant received prospectuses which stated that the Fund would invest for about one year. As a result of the above, Respondent Bond maintained that he should not be held liable.

**RELIEF REQUESTED**

Claimant Robin Viverito, requested \$4,250.84 in actual damages.

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

Respondent Brandon Bond requested that the claims of the Claimant be dismissed.

**OTHER ISSUES CONSIDERED & DECIDED**

The Arbitrator Considered the motion for Summary Judgement made by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. The motion is hereby denied.

**AWARD**

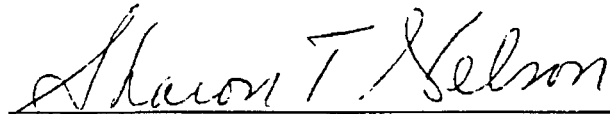
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Sharon T. Nelson, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Robin Viverito, on June 12, 1995, and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on August 14, 1995, and by Respondent Brandon Bond, on November 20, 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 claims of the Claimant, Robin Viverito, against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brandon bond, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robin Viverito, shall be retained by the NASD, Inc. The Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brandon Bond, shall pay to the Claimant Robin Viverito, \$62.50 as reimbursement of the one-half of the filing fee.

**AFFIRMATION**

I, **SHARON T. NELSON, ESQ.**, 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:      January 22, 1996