

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Kantilal P. Desai,

Claimant,

v.

No. 95-03580

Merrill, Lynch, Pierce Fenner & Smith,

Respondent.

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REPRESENTATION OF PARTIES

The Claimant, Kantilal P. Desai, ("Claimant"), was represented by John A. Koepke, Esq. of Looper, Reed, Mark & McGraw located in Dallas, Texas.

The Respondent, Merrill Lynch Pierce Fenner & Smith Incorporated ("Respondent") was represented by Anne D. Whitney, Esq. and Brian Helberg, Esq. of Secore & Waller, L.P. located in Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 24, 1995.

The Amended Statement of Claim was filed on or about October 13, 1995.

The Claimant's Submission Agreement was signed on July 13, 1995.

The Statement of Answer was filed by Respondent on or about September 14, 1995.

Respondent's Submission Agreement was signed by Michael J. Stewart, Vice President and Assistant General Counsel, on September 13, 1995.

HEARING INFORMATION

The hearing date was May 13, 1996 for two (2) sessions.

The Hearing Location was Dallas, Texas.

CASE SUMMARY

Claimant, alleged that he opened an IRA account with Respondent through Roy Whiteman, a financial consultant of Respondent, in 1989. The Claimant's funds were invested in various Certificates of Deposit and Eaton Vance Prime Rate Trust mutual fund, collateralized mortgage obligations, and a position in Respondent's Short-term Global Income Fund ("Fund"). In connection with Respondent's investment of Claimant's funds the Claimant alleged the following causes of action: misstatements and/or omissions of material facts, fraud, unsuitability, unauthorized trades, breach of a duty, and other unauthorized account activities.

Respondent's denied each and every allegation of wrongdoing and liability set forth in or implied by the Statement of Claim. Respondent's further asserted that it had committed no wrongs against Claimant and therefore should not be liable for any damages.

RELIEF REQUESTED

Claimant requested that he be awarded all relief sought in his Statement of Claim, actual damages of \$28,475, punitive damages of \$60,000, and his attorneys fees of \$5,000, plus reimbursement of his filing fees.

Respondent requested that the Claimant's Claim be dismissed in its entirety. Respondent further requested its attorneys fees in its pre-hearing motion.

OTHER ISSUES CONSIDERED & DECIDED

At the Hearing of this matter, the Respondent requested that the Claim be dismissed pursuant to the statute of limitations. The motion is denied.

The parties have agreed that the Award in this matter may be executed by 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 remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- (1). That the Claimant shall not recover any compensatory damages, interest, attorneys fees, or punitive damages;
- (2). That any relief not specifically awarded, other than forum fees which are calculated below, is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed: two (2) Hearing sessions \$300.00 X 2 = \$600.00, one (1) pre-hearing conference X 300.00, less the \$300.00 previously paid by Claimant for a total due of \$600.00.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimant.

The NASD shall retain the adjournment fee in the amount of \$300.00 previously paid by the Respondent. Pursuant to Section 45 of the NASD Code of Arbitration Procedure, the Respondent shall pay its member surcharge in the amount of \$200.00 to the NASD.

The remaining forum fees in the amount of \$600.00 are assessed against Claimant in the amount of \$150.00, and in the amount of \$450.00 against the Respondent.

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

ARBITRATOR'S SIGNATURE

Dated:

Name:

5/30/96

/s/ Daniel Kile

Daniel A. Kile  
Presiding Chair  
Public Arbitrator

Date of Service by the NASD: 5/30/96