

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Stellar Pharmacal Corporation

95-03960

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

REPRESENTATION

For Claimant, Stellar Pharmacal Corporation ("Stellar"): Paul J. Robinson, Esq., of Robinson and Marks, P.A., of North Miami Beach, Florida.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"): Paul A. Stuart, Esq. of Stuart & Walker, P.A. Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on: August 18, 1995.

Claimant's Submission Agreement signed on: August 18, 1995.

Respondent's Answer filed on: November 3, 1995.

Respondent's Submission Agreement signed on: November 3, 1995.

HEARING INFORMATION

On September 9, 1996, a telephonic pre-hearing conference lasting one (1) session was conducted in Fort Lauderdale, Florida.

On October 14, 1995, a hearing lasting two (2) sessions was conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that it did not give knowing consent to Respondent to convert Claimant's corporate operating account into municipal bond fund and that, in the light most favorable to the Respondent, the Claimant agreed to permit \$10-20,000.00 (not \$50,000.00) to be put into a safe conservative investment (unidentified at meeting between CEO and Respondent) yielding a higher interest rate than the money market. Claimant further alleged that according to testimony on both sides, Respondent immediately converted \$50,000.00 into a non-conservative fund which quickly lost principal. Claimant also stated that Respondent failed to contact Claimant regarding the downward spiral of the investment until Claimant recognized the ongoing loss when its corporate operating account checks started to "bounce"; that from the time the Claimant was placed in the investment (February '94) until it got out of the fund (May '94), Claimant did not receive prospectus on the fund; that testimony was given on both sides that Respondent did not identify the investment or its risk at the initial meeting between Scott Davidson and Robert Case - although routine computer-generated transactional statement of Respondent claims prospectus was mailed; and, that no testimony from Respondent directly refuted Claimant's evidence that it (through its CEO) did not know the nature or risk potential of the investment.

Respondent alleged that the Statement of Claim failed to state a claim upon which relief can be granted; that Claimant is barred from any recovery because it directed, authorized, consented to, acquiesced in, and/or ratified all transactions in its account with Merrill Lynch; and that any losses in the account were caused by Claimant's investment decisions coupled with market conditions outside the control of Respondent. Respondent further alleged that it acted properly and in good faith with regard to Claimant's accounts.

RELIEF REQUESTED

Claimant requested \$6,200.00 in compensatory damages.

Respondent requested that the Claimant's claims for damages be denied in all respects, and that the costs of this action, including attorney's fees, be assessed against Claimant.

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.

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. Respondent, Merrill, is found not liable and therefore, all claims against it are hereby dismissed.

OTHER COSTS

Other than the Forum Fees detailed below the parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

FORUM FEES


Pursuant to Section 10332 (formerly Section 43c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$700.00 (2 hearing sessions X \$200.00 + one pre-hearing conference X \$300.00)

1. Claimant is hereby assessed forum fees in the amount of \$350.00 for which the NASD shall retain the \$200.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to the NASD, by Claimant of \$150.00.
2. The NASD shall retain the \$75.00 non-refundable filing fee paid by the Claimant.
3. Respondent is hereby assessed forum fees in the amount of \$350.00 payable directly to the NASD.
4. Respondent, Merrill, shall pay to the NASD the outstanding member surcharge of \$100.00 which it owes pursuant to Section 10333 (formerly Section 45) of the Code of Arbitration Procedure.

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

ARBITRATOR

Arbitrator's Signature


John J. Hearn, Esq.
(Sole Public Arbitrator)

Date of Decision: 11-29-96