

NASD REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John S. and Linda M. Ellis

95-04029

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Jack S. Richardson

REPRESENTATION

For Claimants John and Linda Ellis ("claimants") appeared Steve J. Gard, Esq., of the law firm Page & Bacek located in Atlanta, Georgia.

For Respondents Merrill Lynch Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Jack S. Richardson ("Richardson") appeared Terry R. Weiss, Esq. of the law firm Long, Aldridge & Norman located in Atlanta, Georgia.

CASE INFORMATION

The Statement of Claim was filed on August 22, 1995. Claimant's Submission Agreement was signed on August 8, 1995.

Respondents Joint Statement of Answer was filed on October 30, 1995. Respondent Merrill Lynch's Submission Agreement was signed on October 26, 1995. Respondent Richardson's Submission Agreement was signed on October 12, 1995.

HEARING INFORMATION

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|-------------------------|------------------|---|------------|
| Pre-Hearing Conference: | January 9, 1997 | - | 1 Session |
| Hearing Dates/Sessions: | January 14, 1997 | - | 2 Sessions |
| | January 15, 1997 | - | 2 Sessions |
| | January 16, 1997 | - | 2 Sessions |

The hearings were held at the offices of NASD Regulation, Inc. located in Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that on April 18, 1995, Richardson met with Mr. Ellis to discuss their various accounts and a portfolio that they maintained with Merrill Lynch. Claimants further alleged that Mr. Ellis explained that preservation of capital was the foremost concern, so he favored broad diversification in the highest grade corporate bonds. Claimants also alleged the Mr. Ellis explained that he was seeking to invest in safe bonds of investment grades, in the 8 1/5 to 9% range. Claimants asserted that Mr. Ellis also told Richardson that he would be relying on his advice and information, since he worked long hours and traveled extensively, and therefore, would not have the time or access to information sufficient to research his investments.

Claimants further asserted that on April 25, 1995, Richardson contacted Mr. Ellis to advise him that he had 300 Bradlees, Inc. bonds that were in the return range he had specified. Claimants maintained that Mr. Ellis specifically inquired about the companies financial position, and was told by Richardson that the company was in "good shape" financially. Claimants contended that Mr. Ellis also inquired about whether Merrill Lynch was recommending investments in the common stock and was told by Richardson that Merrill Lynch highly recommended Bradlees common stock. Claimants further contended that based upon Richardson's representation and recommendation, Mr. Ellis agreed to purchase 100 of the 300 Bradlees, Inc. bonds.

Claimants stated that prior to Mr. Ellis' purchases the Bradlees bonds had received a series of consistently negative reports in the financial press. According to claimants, the entire history of the company had been marked with indicators of its financial troubles, such that by 1995, Bradlees bonds were considered "junk" rather than safe investment grade securities. Claimants further alleged that on May 23, 1995, Bradlees suspended payments of its quarterly dividends, not less than thirty days after Richardson's recommendation. Claimants argued that respondents failed to contact them about the status of Bradlees financial problems. Claimants asserted that respondents misrepresented and omitted material facts to them regarding the Bradlees bonds.

Respondents Merrill Lynch and Richardson (collectively referred to as "respondents") maintained that Mr. Ellis was an experienced investor who was informed of, and at all times knew or should have known, the risks attendant to the Bradlees bonds. Respondents further maintained the claimants authorized, consented to, and ratified the Bradlees bond purchase. Respondents contended that Mr. Ellis told Richardson his desire to invest income that he had just made on another investment in high yielding income-producing securities. Respondents alleged that when Richardson and Mr. Ellis met, Richardson suggested the he consider investment grade municipal bonds which were generating between 5% and 5-1/2% income on a tax free basis and an after tax equivalent yield of well in excess of 7%. Respondents further contended that Mr. Ellis did not express a desire to own these bonds, in fact Mr. Ellis commented that those rates did not excite him and that he only wanted bonds that generated well in excess of 9%,

According to respondents, Mr. Ellis directed Mr. Richardson to review Merrill Lynch's inventory of high-yield corporate bonds and to make an appropriate recommendation. Respondents maintained that Richardson conducted a thorough search of Merrill Lynch's corporate bond inventory and discovered that Merrill Lynch had 300 Bradlees, Inc. high-yield bonds. Respondents further maintained that Richardson had told Mr. Ellis that the bonds were available, had a coupon of 9-1/4% and would yield 12.7% if held to maturity. Respondents also maintained that Richardson told claimants that a Merrill Lynch analyst followed the company and had rated it "above average" on both a short and long term basis.

Respondents contended that Richardson cautioned Mr. Ellis about the nature of high yield bonds like Bradlees, stating that such bonds generated a higher yield because there was a corresponding higher risk and that they were labeled "junk bonds". Respondents further contended that Richardson specifically stated that the bonds could fluctuate substantially in price as interest rates also changed. Respondents alleged that Mr. Ellis explained that this was not a concern to him because he planned on holding the bonds to maturity. Respondents argued that Mr. Ellis rejected Richardson's warnings and ordered him to purchase 100 Bradlees bonds. Respondents maintained that shortly thereafter, Bradlees experienced financial problems and defaulted on its bonds.

RELIEF REQUESTED

Claimants requested: (1) the rescission of the Bradlees bond purchase or in excess of \$67,000.00 for actual and compensatory damage; (2) the reimbursement of all commissions, trading profits, fees and interest charged against their accounts; (3) for loss as may be established representing the difference in performance between Bradlees bonds investment and a suitable investment; (4) punitive damages to be determined by the arbitrators; (5) costs, expenses, and disbursements, including attorneys' fees, expert witness fees, and forum fees, pre and post award expenses and any other relief the arbitrators deem just and proper.

Respondents requested that the claims of claimants be dismissed in their entirety, plus all costs of this arbitration proceeding.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimants John and Linda Ellis against respondents Merrill Lynch and Richardson are dismissed in their entirety.
2. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43(c)) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by claimants and have assessed the following Forum Fees:

| | | |
|-------------------------------------|---|------------|
| 1 Pre-Conference Hearing X \$300.00 | = | \$300.00 |
| 6 Hearing Sessions X \$500.00 | = | \$3,000.00 |
| minus Hearing deposit \$500.00 | = | \$500.00 |
| Total outstanding | = | \$2,800.00 |

The arbitrators have determined to assess the entire cost of arbitration against claimants. Therefore claimants be and hereby are liable and shall pay the NASD Regulation, Inc. the sum of \$2,800.00.

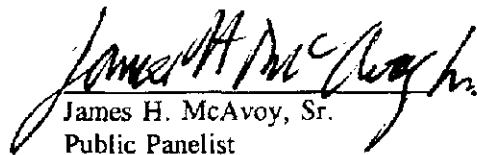
Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

Public/Industry

Joseph Carlisi, Esq.
Public Chairman

Comer L. Hawkins
Industry Panelist


James H. McAvoy, Sr.
Public Panelist

NASDR INC. DATE OF DECISION 2/26/97

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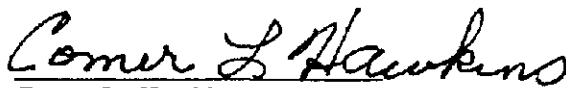
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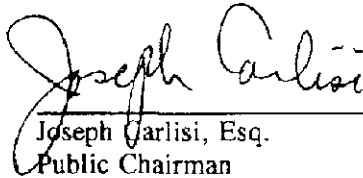
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