

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

 In the Matter of the Arbitration Between
Name of Claimants

Andrew and Gloria M. Mennie

95-04462

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

© National Association of
Securities Dealers, Inc.

All Rights Reserved

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 19, 1995, Claimants Andrew H. and Gloria M. Mennie ("Claimants"), who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. ("Respondent"), misrepresented the Pilgrim Fund. Claimants further alleged that Respondent's employee Tii Piacentini ("Piacentini") met with them periodically after he found out that they would be interested in investing at Merrill Lynch once they sold their Seligman Fund at the "right price." Claimants asserted that upon selling the Seligman Fund, they immediately transferred the proceeds to Merrill Lynch for safe investing. Claimants further asserted that they had confidence in Merrill Lynch because Piacentini emphasized that Respondent's Research Team was highly qualified. Claimants contended that Piacentini described the Pilgrim Fund as steady income producer which was very safe and secure having no or very little fluctuation (similar to a money market). Claimants further contended that they were never told of the risks associated with this investment. Claimants further contended that after a year and half of holding the fund they called Piacentini and were told that the reason for the drop in the fund's value was because the interest rates went up and that he recommended they hang in there because the problem should correct itself.

Claimants alleged that in November, 1995 they decided to keep their account at Merrill Lynch even though Piacentini left the firm. Claimants further alleged that even after he informed Respondent to keep on top of their investments, they never called to advise even as the fund's market value was dropping. Claimants asserted that the consultant that took over their account was not interested in their complaints about Merrill Lynch's misrepresentation and furthermore, he refused to answer when they asked them who his supervisor was. Claimants further asserted that when they finally received the manager's name, which was Mr. Bitterly, they had to chase him for months in order to speak to him. Claimants further asserted that they eventually contacted the Pilgrim Fund and were told that the value of the fund should get worse and possibly better but that could take years. Claimants contended that an attempt at further contact with Mr. Bitterly resulted in a new consultant assigned to their account who could not explain away the misrepresentation about the Pilgrim Fund. Claimants further contended that when they finally

Page Two
Award 95-04462

met Mr. Bitterly and presented their complaints about the misrepresentation made by Merrill Lynch's research team, Respondent informed them that Respondent was not responsible for Piacentini's misrepresentations. Claimants alleged that due to the wrongdoing of the Respondents, they suffered damages for which the Respondents should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. through its representative and in-house counsel, Christopher D. Cavuoti, Esq., maintained that the investment objective of the Pilgrim Fund is to seek high current income by investing primarily in pools of adjustable rate mortgage securities. Respondent further maintained that it was anticipated that the adjustable rate feature of these mortgage securities would help the Pilgrim Fund achieve lower volatility of principal than is characteristic of mutual funds that invest in comparable fixed rate securities, but that no assurance that this objective would be realized was made. Respondent further maintained that Claimants received a prospectus for the Pilgrim Fund which disclosed in detail, the risks and characteristics of the fund. Respondent contended that Claimants had prior experience investing in mutual funds and were well aware that the market value of their investment could fluctuate. Respondent further contended that they notified the Claimants through their account statements of the decline in the value of the fund which was caused by market actions outside of Respondent's control. Respondent maintained that Claimants liquidated their investments for \$14,415.00 and they received \$3,365.00 in dividend income which brought them on a total return basis to a \$7,228.00 loss. Respondent further maintained that it committed no wrongdoing and requested that the claims against it be dismissed.

RELIEF REQUESTED

Claimants Andrew H. and Gloria M. Mennie, requested \$10,000.00 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, John S. Ware, III, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Andrew H. and Gloria M. Mennie on August 22, 1995 and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on February 13, 1996.

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. Respondent Merrill Lynch, Pierce, Fenner & Smith is liable and shall pay the Claimants Andrew H. and Gloria M. Mennie, \$8,832.00 in actual damages.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith is liable and shall pay the Claimants Andrew H. and Gloria M. Mennie simple interest rate of 6% per annum from October 1, 1994 to July 1, 1996.

Page Three
Award 9544462

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith is liable and shall pay the Claimants \$75.00 as reimbursement of one-half of the filing fee.

AFFIRMATION

I, **JOHN S. WARE III**, 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.


Signature of Arbitrator

DATE OF DECISION:

August 21, 1996