

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Maureen H. and Paul E. Belanger

95-05257

Name of Respondents

Richard L. Sullivan and
Matthew Lipman

REPRESENTATION

Claimant Maureen H. Belanger and Paul E. Belanger appeared pro se.

For Respondents, Richard Sullivan and Matthew Lipman, appeared Christopher Cavuoti, Esq., in-house counsel, Merrill Lynch, Pierce, Fenner, Smith Inc., New York, NY

CASE INFORMATION

Statement of Claim filed: November 6, 1995.

Amended Statement of Claim filed: January 25, 1996

Claimant's Submission Agreement signed on: November 2, 1995.

Joint Statement of Answer filed by Respondents Sullivan and Lipman on: December 18, 1995.

Respondent's Answer to the Amended Claim filed: January 29, 1996

Respondent Sullivan's Submission Agreement signed on: December 1, 1995

Respondent Lipman's Submission Agreement signed on: November 29, 1995

HEARING INFORMATION

Hearing Date/Sessions: May 29, 1996 - Two Sessions

The hearing was held at the NASD offices located in New York City, New York

CASE SUMMARY

Claimants alleged that Respondent, Richard Sullivan ("Sullivan"), as agent/representative of Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") convinced Maureen Belanger ("Ms. Belanger") to roll over her SEP/IRA of approximately \$145,000 from former employer to a Merrill Lynch SEP/IRA account. Claimant alleged that pursuant to Sullivan's investment advice Claimants invested \$35,000 in the AIM Charter Fund and \$51,516 in the AIM Weingarten Fund. Claimants further alleged that in August 1993 they transferred \$25,000 from AIM Weingarten Fund to AIM Constellation Fund, and in October 1993 transferred the remaining \$25,000 from AIM Weingarten Fund to AIM Constellation Fund.

Claimants alleged that Sullivan breached the fiduciary duty he owed to Claimants since he did not timely notify the Claimants of May 1994 closing (to new investments) of the AIM Aggressive Growth Fund, a fund in which Claimant wished to invest as of January 1995. Claimants alleged that Sullivan failed, as manager and custodian of the investment accounts, to provide information that only Merrill Lynch and Sullivan could receive on Claimants' behalf, specifically that the AIM Aggressive Growth Fund was closing to new investments as of May 2, 1994.

Claimant alleged that AIM management notified Merrill Lynch of the impending close of the AIM Aggressive Growth Fund via phone and by mail in as early as March 1994 thereby giving Merrill Lynch ample time to notify its own clients of the same.

Claimants alleged that in March 1995, Respondent, Matthew Lipman ("Lipman"), attempted to have Claimants move their SEP/IRA account to his control by misrepresenting his ability to have Claimants investment accepted by AIM Aggressive Growth Fund although they had been told it was closed.

In addition, Claimant alleged that Merrill Lynch, as employer of Lipman failed to adequately supervise its agents in violation of the NASD and SEC regulations. Claimant further alleged that Merrill Lynch charged excessive maintenance and closing fees while Claimants' account was opened and that Merrill Lynch failed to refund the applicable portion of the custodial fee when Claimants' account was closed.

Finally, Claimants alleged that an unauthorized sale was made in Mrs Belanger's Merrill Lynch Growth Fund in the amount of \$2,043.68.

Respondent Sullivan maintained that he did not notify the Claimants of the May 1994 closing of the AIM Aggressive Growth fund as he had not been informed of its closure notwithstanding notification which may have been given to his employer. Sullivan further contended that in any event he was not required to notify Claimants since this fund was unsuitable for Claimants self-expressed moderate risk tolerance and conservative investment goal, which is evidenced in the new account form and their Statement of Claim.

Sullivan maintained that Claimants demand to be informed of all the developments and events within the seven families of mutual funds that they owed, including those that were unsuitable for the Claimants' objectives, is unreasonable.

Sullivan maintained that Claimants are merely using hindsight to complain of a missed profit opportunity, and that Claimants would not have filed their claim if the AIM shares had decreased in value during the

disputed time frame.

Respondent Lipman maintained that he told Claimants that he frequently met with AIM funds marketing staff and would inquire about AIM Aggressive Growth Fund's availability to new investors, however, he never claimed he could get them into the fund and Claimants agreed that his alleged conduct did not result in any monetary damages..

Respondents alleged that the custodial fee is never prorated and that all clients are charged the same fee if they have an open account when the fee is charged.

Respondents denied that an unauthorized trade was made in Ms. Belanger's account and maintained that a clerical error was made on April 19, 1995, whereby \$2000.00 was inadvertently deposited into Mrs. Belanger's account. Respondents further maintained that after Mrs. Belanger repeatedly refused to return the money Merrill Lynch liquidated a portion of her IRA to recover the money.

RELIEF REQUESTED

Claimants requested damages of \$11,135.68, consisting of:

- a) \$8800.00 in unrealized profits;
- b) \$2043.68 for unauthorized sale; and,
- c) \$ 267.00 in custodial account fees.

Respondent Sullivan and Respondent Lipman requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

1. The Statement of Claim only named two individual Respondents, Matthew Lipman and Richard Sullivan, as parties to this arbitration. Merrill Lynch, Pierce, Fenner & Smith, Inc. was not named as a party to this action. Therefore, Merrill Lynch was not served with the Statement of Claim and was not required to submit a Statement of Answer nor execute a Submission Agreement. In light of the above, the arbitrator did not consider any references as to Merrill Lynch's culpability in this matter and only relied upon those references with respect to determining the liability of the individual Respondents.
2. The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy 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. All claims against Respondent Richard Sullivan be and hereby are dismissed.
2. All claims against Respondent Matthew Lipman are dismissed on Motion.
3. Each Party shall bear their respective costs, including attorneys' fees.
4. Respondent Sullivan is liable and shall pay to Claimant the sum of \$300.00 as reimbursement for the hearing session deposit paid by Claimant.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Total Forum Fees: \$600.00 (2 Sessions x \$300)

Respondent Sullivan is assessed \$600.00 representing the total fees due, less \$300.00 paid, leaving \$300.00 due. Respondent Richard Sullivan is liable and shall pay to the NASD the sum of \$300.00.

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

ARBITRATOR'S SIGNATURE

/s/ _____
Michael G. Shannon, Esq.

ARBITRATOR'S SIGNATURE

Michael G. Shannon
Michael G. Shannon, Esq.

Date of Decision: July 22, 1996

I, Michael Shannon, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Michael G. Shannon
Michael Shannon, Esq.