

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Johanna M. Kluger
Johanna M. Kluger Revocable Trust

95-05986

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Bruce Arnold Chappell
William L. Johnson

REPRESENTATION

For Claimants: Eric A. Lanigan, Esq. of the Law Office of Eric A. Lanigan, Winter Park, Florida.

For Respondents: Michael E. Olney, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: December 21, 1995.

Amended Statement of Claim filed: March 26, 1997.

Claimant Johanna M. Kluger's Submission Agreement signed on: December 11, 1995.

Claimant Johanna M. Kluger Revocable Trust's Submission Agreement signed on: January 8, 1996.

Joint Statement of Answer filed by Respondents on: March 7, 1996.

Addendum to Answer filed by Respondents on: April 1, 1997.

Statement of Amended Answer filed by Respondents on: May 16, 1997.

Additional Statement of Amended Answer filed by Respondents on: October 13, 1997.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc's Submission Agreement signed on: March 6, 1996.

Respondent Bruce Arnold Chappell's Submission Agreement signed on: February 2, 1996.

ratification, assumption of the risk, that they had acted in a commercially reasonable manner, statutes of limitation, failure to mitigate damages, laches, and that Claimant's Merrill Lynch portfolios were more profitable than Claimant's pre-Merrill Lynch portfolio, and that any loss of principal incurred by Claimant on the sale of any individual position resulted from her unsolicited liquidations following the 1994 bond bear market.

RELIEF REQUESTED

Claimants requested \$44,928.50 in compensatory damages, \$10,782.84 in pre-judgment interest, \$134,785.50 in punitive damages and \$3,750.00 in costs and expenses.

Respondents requested a dismissal of all claims against them, a specific directive that all references to this claim be deleted from the individual Respondents' CRD files, that all costs be assessed against Claimant Johanna M. Kluger and any further relief that the Panel deemed just and proper.

The parties jointly reserved the issue of attorneys' fees to a separate action in court.

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 NASD Regulation, Inc.

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. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Bruce Arnold Chappell and William L. Johnson are found liable, jointly and severally, and shall pay to Claimant Johanna M. Kluger \$25,000.00 in compensatory damages, plus Florida statutory interest for the period October 1, 1993 to December 1, 1997.
2. Claimant's request for punitive damages is denied.
3. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Bruce Arnold Chappell and William L. Johnson are found liable, jointly and severally, and shall pay to Claimant Johanna M. Kluger \$200.00 representing reimbursement of Claimant Johanna M. Kluger's claim filing fee.
4. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Bruce Arnold Chappell and William L. Johnson are found liable, jointly and severally, and shall pay to Claimant Johanna M. Kluger \$750.00 representing reimbursement of Claimant Johanna M. Kluger's hearing session deposit.
5. The parties' requests for costs are denied.
6. The Respondents' Motion to Expunge is denied.
7. The parties are referred to a court of competent jurisdiction for a determination of entitlement to and amount, if any, of attorneys' fees to be awarded.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$10,050.00 (\$300.00 x 1 pre-hearing conference plus \$750.00 x 13 sessions).

1. Respondents are jointly and severally assessed \$10,050.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by the Claimants in partial satisfaction thereof leaving a balance due in the sum of \$9,300.00.

2. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$200.00 paid by the Claimant Johanna M. Kluger.

3. NASD Regulation, Inc. shall retain the hearing session deposit of \$750.00 paid by the Claimant Johanna M. Kluger.

4. NASD Regulation, Inc. shall retain the member surcharge of \$350.00 paid by Respondent Merrill Lynch Pierce Fenner & Smith, Inc.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/S/

Albert R. Neville, Jr.

Public Chairperson

/S/

John R. Phillips, Esq.

Public Panelist

/S/

Warren A. Forest

Industry Panelist

Date of Decision: 2/20/98