

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ruth E. Massingill Revocable Trust

96-00477

Name of Respondent

Merrill, Lynch, Pierce, Fenner & Smith, Inc.
Bradley J. Hopper
Christopher J. Payson
David R. McWilliams

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 1, 1996, Claimant Ruth E. Massingill as Trustee for the Ruth E. Massingill Revocable Trust ("Claimant"), an 83 year old widow, alleged that in May of 1995 she contacted Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") where she had her life savings invested and from which she received monthly income checks for living expenses. Claimant further alleged that upon calling she learned that her broker had left MLPFS and that her call was taken by Respondent Bradley J. Hopper ("Hopper") who persuaded her to meet with him about her investments. Claimant also alleged that Hopper convinced her to sell her Putnam Government fund stating that she would lose principal and income if she did not switch and that the trading would be commission free. Claimant contended that Hopper had her sign forms that closed her other accounts and reinvested her mutual fund dividends which had the effect of stopping her monthly income checks. Claimant further contended that due to severe health problems during the summer of 1995, she was delayed in discovering that her income had decreased and that front end commissions had been charged reducing the principal. Claimant also contended that Hopper refused to reverse the transactions.

Claimant asserted that Respondent David R. McWilliams ("McWilliams") contacted her and upset her stating that she wanted to make the trades. Claimant further asserted that Respondents McWilliams and Christopher J. Payson failed to supervise Hopper leading to the unsuitable investment.

Respondents MLPFS, Hopper, Payson and McWilliams, through their representative, Christopher D. Cavuoti, in-house counsel at MLPFS, denied all allegations of wrongdoing or liability in Claimant's claim for damages. Respondents maintained that it appears that the claim was promoted by, Alex Lambros, who Claimant states was her broker prior to Hopper and who is a disgruntled ex-employee. Respondents further maintained that MLPFS's records showed that Claimant did not have an account with its Cape Coral branch office prior to May 1995. Respondents also maintained that Hopper arranged a meeting with Claimant wherein she indicated a desire to sell her high yield bonds and Putnam U.S. Government Income Trust. Respondents contended that Hopper discussed Corporate Income Funds ("CIF"), which paid monthly dividends, and corporate bonds, which paid interest every six months. Respondents also contended that Claimant was informed of a 4% upfront commission charge for a CIF purchase. Respondents further contended that in June of 1995, the negative and positive aspects of the proposed transaction were discussed. Respondents asserted that Claimant approved of the trades and that a prospectus was mailed to her along with a trade confirmation. Respondents further asserted that although Claimant's mutual fund dividends were placed on reinvestment, that was changed upon her request. Respondent also asserted that her CIF purchase has paid more in interest than it has lost in value, and that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimant Ruth E. Massingill Revocable Trust requested \$2,099.00 return of principal and \$108.00 income loss plus treble and punitive damages for a total of \$10,000.00.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., Bradley J. Hopper, Christopher J. Payson, David R. McWilliams requested that the claims of the Claimant be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed Claimant's motion to bar consideration of Respondent's Statement of Answer on the grounds that it was not timely filed. The arbitrator denied the motion.

The arbitrator considered and reviewed Respondent Payson and McWilliams motion to be dismissed as parties on the grounds that they are not parties in interest. The arbitrator denied the motion.

The arbitrator considered and reviewed Claimant's motion to compel Respondents to produce information that she requested on April 15, 1996. The arbitrator denied the motion.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul Elliot, was selected to review the matter in controversy between the parties set

forth in submissions to Arbitration signed by the Claimant on February 14, 1996 and by Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., Christopher Payson and David McWilliams on March 25, 1996, and Bradley J. Hopper on February 23, 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. The claims of the Claimant Ruth E. Massingill Revocable Trust against Christopher Payson, David McWilliams, and Bradley Hopper are denied in their entirety.
2. The Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimant Ruth E. Massingill Revocable Trust \$2,207.00 in actual damages.
3. The Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimant Ruth E. Massingill Revocable Trust interest at the rate of 12% per annum from December 1, 1995 to December 31, 1995 and 10% per annum from January 1, 1996 to the date of the award.
4. The parties shall bear their respective costs.
5. 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, Inc. is liable and shall pay to the Claimant Ruth E. Massingill Revocable Trust \$150.00 as reimbursement of the filing fee.
6. All other relief requests are denied.

AFFIRMATION

I, PAUL ELLIOTT 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: September 10, 1996