

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Ethel Hyman Schnitt

Claimant,

v.

No. 96-00505

Merrill Lynch, Pierce, Fenner & Smith, Inc., and
John O. White,

Respondents.

REPRESENTATION OF PARTIES

Claimant Ethel Hyman Schnitt ("Claimant") was represented by Louis L. Plotkin, Esq. of Gertler, Gertler, Vincent & Plotkin located in New Orleans, Louisiana.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and John O. White ("White") (collectively referred to as "Respondents") were represented by William R. Forrester, Jr., Esq. of Lemle & Kelleher, L.L.P. located in New Orleans, Louisiana.

CASE INFORMATION

The Statement of Claim was filed on or about February 5, 1996.

Claimant's Submission Agreement was signed on February 13, 1996.

The Joint Statement of Answer was filed on or about April 11, 1996.

Respondent Merrill Lynch's Submission Agreement was signed on April 11, 1996 by Robert E. Goldberg of Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent White's Submission Agreement was signed on March 6, 1996.

HEARING INFORMATION

The hearing was held on October 2, 1996 for two (2) sessions and November 19, 1996 for two (2) sessions in New Orleans, Louisiana.

CASE SUMMARY

Claimant alleged that she opened an account at Respondent Merrill Lynch and that Sandy Loubat was her broker. Claimant contended that she had no prior investment experience and advised Ms. Loubat that she was an extremely conservative investor who wanted to preserve her principal. Claimant asserted that, when she discovered that her instructions had not been followed, her account was transferred to Respondent White, who was also a broker at Merrill Lynch.

Claimant maintained that she specifically instructed Respondent White that her overriding investment objective was safety and that she did not want to lose any of her principal investment. Claimant alleged that Respondent White failed to follow her instructions. Claimant contended that Respondent White invested Claimant's money in a variety of mutual funds, such as the Alliance North American Investment Fund, which was invested in Mexican securities. Claimant asserted that these investments were entirely unsuitable for Claimant and contrary to Claimant's instructions.

Respondents denied all liability to the Claimant in the Joint Statement of Answer. Respondents alleged that all investment recommendations to Claimant were fully explained to her, and that all the recommendations made by Respondents were clearly suitable and within the framework of Claimant's investment objectives. Respondents contended that the Claimant was aware there was a risk to principal on all her investments, and received a prospectus in connection with any prospectus item.

Respondents made various affirmative defenses, including, but not limited to: that the Statement of Claim fails to allege claims upon which relief can be granted; estoppel and ratification; that Claimant failed to exercise due diligence; that Claimant was negligent in the supervision of her financial affairs; and that Claimant suffered no damages.

RELIEF REQUESTED

Claimant requested an award of approximately \$25,000 in out-of-pocket losses, an award of those sums she would have earned had Respondents recommended suitable investments, an award of punitive damages, an award for stress and severe emotional and mental anguish, as well as an award of interest, costs, and attorney's fees.

Respondents requested that the Statement of Claim be denied and dismissed in its entirety and that costs and other relief be assessed against the Claimant.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) That the Statement of Claim is dismissed in its entirety with prejudice; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) hearing sessions x \$400 = \$1,600 in forum fees. Total forum fees are \$1,600. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Ethel Hyman Schnitt.

Pursuant to §10332(c) of the Code, Claimant Ethel Hyman Schnitt is liable for, and shall pay forum fees in the amount of \$400.

Pursuant to §10332(c) of the Code, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and John O. White are liable for, and shall pay forum fees in the amount of \$800.

Pursuant to §10333 of the Code, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is also liable for, and shall pay the member surcharge fee in the amount of \$200.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ S. David Holladay
S. David Holladay, Esq.
Chairperson
Public-Arbitrator

December 13, 1996
Dated:

\s\ Sherrill I. Davidson
Sherrill I. Davidson, Esq.
Panelist
Public Arbitrator

December 16, 1996
Dated:

\s\ Ronald M. Roberts
Ronald M. Roberts, PhD.
Panelist
Industry Arbitrator

December 16, 1996
Dated:

For NASD use only:

Date award served on the parties: December 31, 1996