

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Rudolph & Nelly Anderson

96-00551

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Norman J. Marcotte

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 6, 1996, Claimants Rudolph and Nelly Anderson ("Claimants"), who appeared Pro Se, alleged that Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Respondent Norman J. Marcotte ("Marcotte") gave them unsuitable investment advice for their short term financial needs. Claimant Rudolph Anderson further alleged that in November 1993 he stated to Marcotte that he wanted to invest in a six-month C.D., as he would be buying a car within one year and wanted funds available for its purchase. Claimant contended that Marcotte encouraged him to invest in Lord Abnett U.S. Government Securities Trust ("Trust"), stating that the Trust only had short term bonds. Claimant further contended that Marcotte misrepresented the Trust as a substantial portion of the Trust's portfolio actually consisted of long term bonds. Claimant asserted that he was not provided with a prospectus, and that Marcotte discouraged him from selling when the Trust's value began to depreciate. Claimants maintained that due to the wrongdoing of the Respondents, they have suffered damages for which the Respondents should be held liable.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. and Respondent Norman J. Marcotte, through their representative and counsel Christopher D. Cavuoti, Esq., maintained in their Answer that Claimants were provided with a prospectus and that Claimant Norman Anderson was advised that the average maturity of the Trust was 8.3 years. Respondents further maintained that Claimant did not indicate that his invested funds would be needed within a year. Respondents alleged that Claimant was an experienced investor who chose to accept the financial risk associated with the Trust. Respondents further alleged that Claimants were fully aware of the decline in the value of their investment and that at all times they were free to liquidate their position in the Trust. Respondents maintained that they had committed no wrongdoing and requested that the claims against them be dismissed.

In a Reply to Respondent's Answer, Claimant Norman Anderson alleged that he was not informed of the 8.3 average maturity of the bonds in the Trust and that he indicated to Marcotte that he needed the invested funds within a year. Claimant denied that he received a prospectus and asserted that when he tried to mitigate his loss, he was advised to maintain his position in the Trust. Claimant alleged that he informed Marcotte that he did not want to invest in bonds, and further alleged that the Trust was misrepresented and unsuitable for his financial needs.

RELIEF REQUESTED

Claimants Rudolph and Nelly Anderson requested \$2,344.95 in actual damages.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. and Respondent Norman J. Marcotte requested that the claims of the Claimants be dismissed and that the costs of the proceeding be assessed against the Claimants.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Andrew J. Bolnick, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Rudolph and Nelly Anderson on February 2, 1996, and by the Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on April 1, 1996, and by the Respondent Norman J. Marcotte on March 7, 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 Claimants Rudolph and Nelly Anderson against Respondent Merrill Lynch Pierce Fenner & Smith, Inc. and Respondent Norman J. Marcotte are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Rudolph and Nelly Anderson, shall be retained by the NASD, Inc. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is liable and shall pay to Claimants Rudolph and Nelly Anderson \$25.00 as reimbursement of one-half of the filing fee.

AFFIRMATION

STATE OF *Florida*

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SS:

COUNTY OF *Piellas*

I, *Andrew Bolnick*, 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:

July 25, 1996