

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Richard A. and Charmaine D. Yorty

96-00596

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
Kurt Nielsen

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers, Inc. on February 9, 1996, claimants Richard A. and Charmaine D. Yorty ("Claimants") who appeared Pro Se, alleged that respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kurt Nielsen ("Nielsen")(collectively referred to as "respondents"), mismanaged Mr. Yorty's account. Claimants further alleged that on February 17, 1987, Mr. Yorty purchased \$3,000.00 (face amount of redemption) of Florida Federal Savings & Loan ("FFS&L") cash compounder zero coupon bond from their account manager at Piper, Jaffray & Hopwood. Claimants contended that they later transferred their account, including the FFS&L bonds to Merrill Lynch. Claimants also alleged that on January 21, 1991 and January 25, 1991, they received a letter from Merrill Lynch stating that the Resolution Trust had appointed a new receiver for FFS&L Bank and that Mr Yorty's cash compounder was being transferred into a 8.25% certificate of deposit ("CD"). Claimants asserted that Merrill Lynch gave them an option to either redeem the zero coupon or transfer the coupon into a 8.25% CD, the claimants transferred into the CD. Claimants further asserted that in preparing their 1994 tax returns in March of 1995, they realized that there was a significant discrepancy between their records and those of Merrill Lynch concerning the redemption amount of the Florida Savings CD.

Claimants contended that between March 1995 and May 1995, they repeatedly called Mr. Nielsen regarding the status of his investigation into the CD interest rate and redemption discrepancies. Claimants further contended that on one occasion Mr. Nielsen told Mrs. Yorty that the discrepancies were their problem, that he was very busy with other matters and that in the future they should speak with his assistant. Claimants also contended that in April 1995, Mr. Nielsen's assistant informed them that there had been a 1993 interest rate reduction in the CD from 8.25% to 3.75%. Claimants alleged that at no time prior to this April 1995 conversation had they been informed of any interest rate reduction or change in the CD. Claimants further alleged that beginning on May 18, 1995, they started a letter campaign to Merrill Lynch's Customer Service Department. Claimants also alleged that on July 14, 1995, they received a letter from Merrill Lynch informing them of the reduction in interest rates for the bond. Claimants asserted that Merrill Lynch claimed to have sent three (3) letters dated January 17, 1991, January 25, 1991, and November 23, 1994. Claimants further asserted that they never received the

November 1994 letter, which was missing an addressee and was supposedly sent to inform them that the interest fell to 3.75%. Claimants also asserted that Merrill Lynch received notification of the interest rate reduction and failed to pass the information along to them. Claimants contended that had they known about the fallen interest rate, they would have never allowed their investment to remain in an account returning less interest than they would have received in any liquid bank passbook.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kurt Nielsen ("Nielsen"), through their representative and in-house counsel, Christopher D. Cavuoti, Esq., maintained that claimants purchased a \$1,605.60 Florida Savings and Loan CD, that had a face value of \$3,000.00 at maturity on November 23, 1994. Respondents further maintained that the claimants held on to their CD even after they received their account statement which disclosed that the Director of the Office of Thrift Supervision closed the Florida Federal Savings and Loan Association, resulting in an interest rate reduction to 8.25%, changing the CD's maturity value from \$3,000.00 to \$2,613.00. Respondents contended that on October 31, 1991, First Union National Bank of Florida, three months after their purchase of Florida Federal Savings Bank, mailed a letter to CD holders advising them that their deposits would earn 3.75% per year compounded monthly and \$2,038.00 upon maturity. Respondents further contended that claimants' belief that they should have received \$3,525.41 at maturity is wrong because even if there were no changes in the interest rate the maximum proceeds they could have received was the \$3,000.00 face value. Respondents maintained that they had no control over the interest rate changes. Respondents further maintained that in order to resolve this matter they offered the claimants \$333.00 (the difference in the interest rates of 3.75% and 8.25% for three years) which the claimants declined. Respondent Merrill Lynch also maintained that the claimants did not purchase the investment at issue through them and claimants were at all times properly informed regarding the interest rate changes on their CD. Respondents contended that it committed no wrongdoing, and requested that the claims be dismissed.

#### **RELIEF REQUESTED**

Claimants Richard A. and Charmaine D. Yorty requested \$1,245.08, representing the interest on the Florida Federal Savings & Loans bond; \$120.00 as reimbursement for two years of unearned account fees; and \$50.00 for reimbursement of the arbitration fee.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and Kurt Nielsen requested that the claims of the Claimants be dismissed and that they be reimbursed for the costs of the proceeding.

**AWARD**

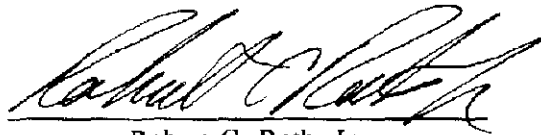
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert C. Roth, Jr., Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants Richard A. and Charmaine D. Yorty on February 6, 1996 and by the respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. on April 15, 1996 and Kurt Nielsen on March 20, 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. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kurt Nielsen are jointly and severally liable and shall pay to the claimants Richard A. and Charmaine D. Yorty \$332.60.
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 Richard A. and Charmaine D. Yorty shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kurt Nielsen are jointly and severally liable and shall pay to the claimants \$25.00 as reimbursement of one-half the filing fee.

**AFFIRMATION**

I, **ROBERT C. ROTH, JR.**, 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.

A handwritten signature in cursive script, appearing to read "Robert C. Roth, Jr.", written over a horizontal line.

Robert C. Roth, Jr.

DATE OF DECISION: August 27, 1996