

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Marian Bellama

96-00863

Name of Respondent

*Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

Claimant Marian Bellama ("Claimant") represented herself.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") was represented by Robert E. Goldberg, Vice President and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY

CASE INFORMATION

Statement of Claim filed: February 23, 1996

Claimant's Submission Agreement signed on: March 12, 1996

Statement of Answer filed by Respondent on: May 7, 1996

Respondent's Submission Agreement signed on: June 21, 1996

HEARING INFORMATION

Hearing Date/Sessions: November 15, 1996 - two sessions

Hearing Location: NASD, Inc., Executive Offices,
Washington, DC

CASE SUMMARY

Claimants alleged, among other things, that her funds were handled inappropriately by Respondent. Claimant alleged that upon the advice of Respondent's financial consultant John Gideon ("Gideon"), she liquidated mutual funds which were previously purchased and long-held by her (outside of Respondent), and opened professionally managed "wrap" accounts at Respondent. As a consequence of her mutual fund sales, the Claimant realized substantial capital gains and consequently had to pay taxes of approximately \$36,573.00.

Respondent denied all allegations of wrongdoing alleged by Claimant and maintained that it is not liable to Claimant and that her request for damages should be denied. Respondent maintained that Claimant came to it fully aware of the unrealized capital gains associated with her mutual funds. Respondent maintained that when Gideon asked Claimant about her cost basis in her investments that she refused to take the necessary steps to ascertain that information. Respondent further maintained that the several mutual funds in issue were inconsistent with the risk factors she related to Gideon. Respondent maintained that Claimant knew about, and, indeed acknowledged in writing, her tax liability on the sale of the investments at issue. Respondent maintained that Claimant sustained no losses.

RELIEF REQUESTED

The Claimant seeks damages in the amount of \$10,000.00 from Respondent.

Respondent requested that Claimant's claim be dismissed in its entirety and that costs of this proceeding be assessed against Claimant.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. The parties shall bear their respective costs and attorney's fees, except as ~~forum~~ fees are specifically addressed below.
3. Any and all claims for relief not specifically addressed are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions x \$200 = \$400

Forum Fees Assessed Against: 50% against Claimant and 50% against Respondent. Claimant's forum fees equal \$200, however, Claimant is entitled to offset this amount with her hearing session deposit of \$200 previously deposited so that no additional fees are due from Claimant. Respondent is assessed forum fees in the amount of \$200.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATOR'S REPORT AND FINDINGS

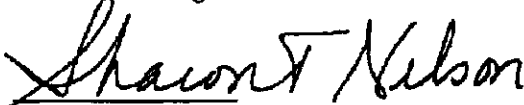
At the hearing, Claimant alleged that Respondent misguided her into selling her existing mutual fund portfolio without consideration of the substantial capital gains tax liability. Based on the sale of her portfolio, Claimant paid approximately \$37,000 in state and federal capital gains tax. Claimant further questioned (although it was not in her initial complaint and her motion to amend was denied) the number of investments made in her portfolio, although she acknowledged that she was paying an advisor fee and not a commission on the trades and that the portfolio made a substantial return.

Claimant's present advisor, Mr. Kevin Condon ("Condon"), Claimant's witness, testified that Respondent was correct in recommending Claimant sell her existing mutual fund portfolio. Claimant wanted only moderate risk. Her portfolio was in aggressive growth funds of a higher risk than she wanted. Condon further testified that his only problem with Claimant's portfolio created while at Respondent was the enormous number of securities. However, Condon did agree that it had the proper diversification and could find no fault with any of the securities selected for Claimant. Condon testified that Respondent was at fault in allowing Claimant to go through the trauma of the enormous capital gains tax. He further testified that there were means Respondent should have taken, and that he would have taken, to lessen her tax burden. When pressed as to what means should have been taken, Condon explained that "offset" (losses) should have been created or found, or the sale should have been delayed to wait for the possible legislative change in the capital gains tax. Claimant also acknowledged that she signed an agreement with Respondent, placing the burden on herself of exploring her tax liabilities. Claimant had a tax advisor at the time of the transactions in question. Furthermore Claimant did not consummate the sales at issue until several weeks after receiving the advise to sell.

Findings: Respondent had an obligation to encourage Claimant to dispose of all the securities in her portfolio which were of a risk higher than she wanted. Respondent met its obligation by so informing Claimant. While the concept of waiting for a legislative change or offsetting losses has validity with respect to the time of disposition of some assets, it must be balanced against the need to dispose of securities which are unsuitable for the investor. Based on all the evidence present, Claimant has not sustained her burden of proof. Therefore, Respondent is not liable for any damages. The parties shall pay their respective costs and forum fees shall be split 50%/50%.

Arbitrator's Signature

Date



12/16/96

Sharon T. Nelson, Esq., Presiding
Public Arbitrator

Date Award Served by NASD Regulation: December 17, 1996