

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Cecilia E. Perry as Trustee for the  
Cecilia E. Perry Trust

96-01072

Name of Respondents

Merrill, Lynch, Pierce, Fenner & Smith, Inc.  
Kenneth Towers

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 11, 1996, claimant Cecilia E. Parry as Trustee for the Cecilia E. Perry Trust ("claimant"), who appeared Pro Se, alleged that respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), through its representative respondent Kenneth Towers ("Towers"), without authorization sold Trust assets. Claimant further alleged that in December of 1994, she transferred her assets to MLPFS and that Towers sold her Zero Coupon Treasury Bonds ("Bonds") prior to maturity thereby incurring transactions costs, income losses and premature sale losses. Claimant also alleged that she never sold a fixed maturity investment prior to maturity even when it was highly inconvenient to wait for the maturity date. Claimant further contended that she did not authorize the sale of her preferred stock in First Interstate Bank, Bank of America, PGE, Union Bank, Chemical Bank and Citicorp. Claimant also contended that she did not realize the sales had occurred until she saw her 1994 income tax return on March 26, 1995. Claimant asserted that she complained to MLPFS but was unsuccessful in resolving the dispute. Claimant further asserted that as a result of the above, she has suffered losses for which the respondents should be held liable.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Kenneth Towers ("respondents") through their representative and in-house counsel Christopher D. Cavuoti, Esq., maintained that in December of 1994, claimant met with Towers, her MLPFS broker prior to transferring her account to Dean Witter, and asked the he take her back as a customer because she was losing a thousand dollars a month at Dean Witter. Respondents further maintained that Towers discussed with claimant how she could change her portfolio to stop the losses and that claimant agreed and signed forms transferring her account back to MLPFS. Respondents also maintained

that claimant's allegations that the securities were sold without authorization is unfounded. Respondents contended that account statements and trade confirmations were sent to claimant at the time of each trade and that claimant did not make a timely objection.

### **RELIEF REQUESTED**

Claimant Cecilia E. Perry as Trustee for the Cecilia E. Perry Trust requested \$10,000.00 in actual damages.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Kenneth Towers requested that the claims be dismissed in their entirety plus costs.

### **AWARD**

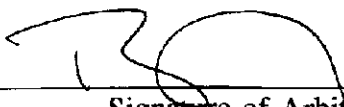
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Theodore A. Griffinger, Esq., was selected to review the matter in controversy between the parties set forth in submissions to arbitration signed by the claimant on March 7, 1996, and by respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. on May 28, 1996, and by respondent Kenneth Towers on May 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 claimant Cecilia E. Perry as Trustee for the Cecilia E. Perry Trust against respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Kenneth Towers are denied in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. 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.
4. All other relief requests are denied.

**AFFIRMATION**

I, Theodore A. Griffinger, Esq., 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 black ink, appearing to be 'T. Griffinger', is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: December 30, 1996

## **REPORT OF ARBITRATOR**

Claimant claims she never authorized respondents to sell her securities and never would have authorized respondents to sell her securities had she been aware that the sale would cause her to lose money. The problem with claimant's contention is that she must have had some reason to visit respondent's office to discuss her account while she had an open account at another firm. Respondents contend claimant's reason that she was upset was that her account was losing money monthly. Claimant ignores this history, stating only that she transferred her assets to respondents in December 1994. Had claimant decided to hold her securities until maturity, there would have been no reason to transfer the account. Further, claimant was apparently aware the securities could fluctuate in value. What solution was there (besides holding) except to sell and invest in more conservative securities?

Thus, based on the evidence, it is more credible to find that claimant was upset about the downward fluctuation in the securities purchased at another firm; that claimant transferred her account to respondents after a meeting at which respondents proposed a solution of more conservative investments which was accepted by claimant; and that claimant should have known that the sale of her securities would generate losses in her account.