

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Ralph A. Fisher, Jr.; Freda Fisher;
Ralph & Freda Fisher Charitable Trust;
Ralph A. Fisher, Jr. Revocable Trust
and Freda Fisher Revocable Trust

NASD CASE NO. 96-01199

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.
and Michael E. Blankenship

REPRESENTATION

For Claimants: Charles E. Steinberg, Esq. of Charles E. Steinberg, P.A., Stuart, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"): Richard L. Martens, Esq. and John D. Boykin, Esq. of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

For Respondent Michael E. Blankenship ("Blankenship"): Scott J. Link, Esq. and John C. Kelly, Esq. of Ackerman, Link & Sartory, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on March 19, 1996. Claimants' Submission Agreements signed on April 8, 1996.

Statement of Answer filed by Respondent Merrill Lynch on June 18, 1996. Respondent Merrill Lynch's Submission Agreement signed on June 17, 1996 by Martin S. Cohen, Vice President & Senior Counsel of Merrill Lynch, Pierce, Fenner & Smith Inc.

Statement of Answer filed by Respondent Blankenship on June 18, 1996. Respondent Blankenship's Submission Agreement signed on June 13, 1996.

Amendment of Statement of Claim Dated March 14, 1996 filed by Claimants on April 14, 1997.

HEARING INFORMATION

On December 16, 1996 and January 6, 1997, telephonic pre-hearing conferences lasting one session each were conducted with the arbitration panel (the "Panel"). On May 21, 22 and 23, 1997, in Fort Lauderdale, Florida, hearings lasting six sessions were conducted with the Panel.

CASE SUMMARY

Claimants alleged that in early 1995, Respondents misrepresented the volatility and risk of certain mutual funds owned by the Claimants in order to induce them to move their account from one Merrill Lynch branch to another. Claimants further alleged that as a result of the misrepresentations, they sold the mutual funds and purchased securities which had less risk and demonstrated less volatility than the mutual funds. Claimants maintained that the mutual funds were, in fact, appropriate investments given their stated investment objectives. Claimants further maintained that they missed the opportunity to profit from the mutual funds after the funds' performance improved.

Respondents denied all of the allegations of wrongdoing contained in the Statement of Claim and maintained that the Claimants' investment objectives, as stated to Blankenship, were preservation of capital and conservative income. Respondents maintained that each recommendation made to the Claimants was suitable and consistent with this stated objective. Respondents further maintained that it was the Claimants who approached Blankenship regarding restructuring their portfolio after suffering unrealized losses in the mutual funds. Respondents asserted that their analysis of the performance of Claimants' accounts showed that Claimants had profited substantially in both Merrill Lynch branch offices.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$974,161.00 plus interest and punitive damages.

Respondent Merrill Lynch requested that the Statement of Claim be dismissed in its entirety and that it be awarded all attorneys' fees, expert witness fees, costs and expenses incurred by Merrill Lynch in connection with its defense of this case.

Respondent Blankenship requested that the Statement of Claim be dismissed in its entirety and that Claimants be ordered to reimburse him for his attorneys' fees, costs and expenses incurred in the defense of this case.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by the Chairperson on behalf of the Panel and have further agreed to receive conformed copies of the Award while the original remains on file with NASD Regulation, Inc.

During the evidentiary hearing in this matter, the Panel was informed that the parties had reached a resolution of all claims submitted for determination. This Award is made pursuant to a stipulation entered into by the parties after three days of hearings (the "stipulation"). The

Panel adopts the parties' stipulation as described below and as set forth in the record of this proceeding.

AWARD

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

1. The Panel finds, based on the testimony of the parties, that the claims asserted against Respondent Blankenship are without any merit. It is the order and directive of this Panel that any all references to this claim be expunged from Michael E. Blankenship's Form U-4 and from the Central Registration Depository (CRD) record.
2. All of Claimants' claims against Respondents Merrill Lynch and Blankenship are dismissed with prejudice, and the parties will exchange mutual general releases.
3. All other claims for relief, including the Claimants' request for punitive damages and the Respondents' requests for attorneys' fees against Claimants, are dismissed with prejudice.
4. Claimants and Respondents shall bear their own fees and costs.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), the Panel has assessed forum fees in the amount of \$8,000.00 (6 sessions x \$1,000.00, plus 2 pre-hearing conferences with the Panel x \$1,000.00) as follows:

1. The Claimants are assessed the sum of \$2,666.66 for which NASD Regulation, Inc. shall retain the \$1,000.00 hearing session deposit previously paid by Claimants in partial satisfaction thereof, leaving a balance due in the amount of \$1,666.66.
2. Respondent Merrill Lynch is hereby assessed the sum of \$2,666.67.
3. Respondent Blankenship is hereby assessed the sum of \$2,666.67.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the \$250.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch shall pay to NASD Regulation, Inc. the \$500.00 past due member surcharge previously invoiced.

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

Arbitrator's Name

Public/Industry

/s/
Richard S. Zaifert, Esq.
Chairperson, on behalf of the Panel

Public

Stanley Seidman

Public

Joel H. Holzer

Industry

Date of Decision: January 7, 1999