

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Kanan and Gail Saib

96-01229

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

REPRESENTATION

Claimants, Kanan and Gail Saib ("Claimants") appeared pro-se.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"), appeared in-house counsel, Marianne Bretton-Granatoor, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 19, 1996

Claimant's Submission Agreement signed on: March 15, 1996

Statement of Answer filed by Respondent on: May 10, 1996

Respondent's Submission Agreement signed on: May 2, 1996

HEARING INFORMATION

Hearing Dates/Sessions:	January 20, 1997	-	Two Sessions
	January 21, 1997	-	Two Sessions

The hearings were conducted at the Wyndham Garden Hotel in Charlotte, North Carolina.

CASE SUMMARY

Claimants, alleged that they were retired professionals with no pension, social security or medical benefits and that, on December 15, 1993, they entrusted their entire life savings of approximately \$450,000.00 with the Respondent. Claimants further alleged that they were willing to accept "reasonable" risks on their investments. Claimants alleged that after two years the return on their investment was only

\$11,939.00. Claimants asserted that respondent was given discretion over the account and certain Class B mutual fund shares were purchased instead of investments with reduced front-end load sales charges. Claimants further asserted that they were never provided with a prospectus for this investment. Claimants contended that despite the fact that the portfolio was income driven with low to medium risk, there were no fixed income positions and more than 30% of their investment was placed in high risk foreign investments. Claimants contended that Respondent took sales commissions by not automatically reinvesting into the stock. Claimants also contended that they received conflicting reports regarding the amount of fees charged by the Respondent. Claimants alleged that, when they attempted to close their account due to its poor performance, they were told they would suffer penalties amounting to 6% of their investment.

Respondent maintained that Claimants opened an account with Merrill Lynch on or about December 7, 1993 and identified their investment objective as "total return" and their risk tolerance as "moderate." Respondent maintained that Claimants indicated they had \$450,000.00 to invest and desired to receive \$35,000.00 in income. In addition, Respondent maintained that Claimants had an annual income over \$50,000.00 and net worth over one million dollars. Respondent maintained that, on December 14, 1994, Claimants identified their investment objective as "income and growth" and their return/risk expectations as low to moderate. Respondent contended that Claimants indicated it would be three to five years before they would need access to their funds for retirement income. Respondent contended that Claimants stated that they preferred Class B mutual fund shares which were described as having distribution fees and contingent deferred sales charges. Respondent also contended that Claimants indicated that they were interested in maintaining "moderate to high" levels of foreign investments and that they were informed that their portfolio contained foreign investments. Respondent maintained that they discussed with Claimants all of the applicable fees, commissions and sales charges and at no time did they ever promise a specific rate of return. Respondents also alleged that prospectuses were sent to Claimants with each mutual fund purchase and in several instances they were provided to the Claimants in person. Respondents maintained that Claimants' portfolio contained numerous fixed income securities and that, in early 1995, Claimants instructed Respondent to have their dividends received as a cash credit to their account. Respondent maintained that it fully disclosed all fees charged to the Claimants. Respondent further maintained that Claimants' claim is founded on nothing more than their disappointment that their account did not perform as they had hoped. Respondents also maintained that, during calendar year 1995, the market recovered from its slump and Claimants earned a 15% return on their investments.

RELIEF REQUESTED

Claimants requested damages in the amount of \$50,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety and that Respondent be awarded attorney's fees and costs.

AWARD

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

1. All claims are dismissed in their entirety;
2. All parties shall bear their respective costs, including attorney's fees; and,
3. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc., shall retain the \$120.00 non-refundable filing fee previously deposited by the claimants and have assessed the following forum fees:

Total Forum Fees: \$1,600.00 (4 Sessions x \$400)

Claimants, Kanan and Gail Saib, are assessed the sum of \$800.00 representing one half of the forum fees due, less \$400.00 previously deposited leaving \$400.00 due. Claimants, therefore are liable and shall pay to NASD Regulation, Inc. the sum of \$400.00.

Respondent, Merrill Lynch Pierce Fenner & Smith Inc., is assessed the sum of \$800.00 representing one half of the forum fees due. Therefore, Respondent is liable and shall pay to NASD Regulation, Inc. the sum of \$800.00

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES



H. Victor Schwimmer, Esq.
Public Chairperson

Leonard Landsman
Public Arbitrator

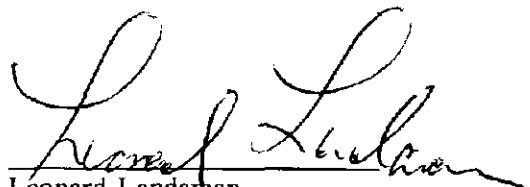
Charles G. Smith
Industry Arbitrator

Date of Decision:

May 13, 1997

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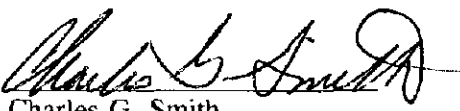
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