

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Roger L. Pierre

96-01253

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.
Joseph W. Sanford

REPRESENTATION

Claimant Roger L. Pierre ("Claimant") was represented by John P. Connolly, Esq., Alexandria, VA.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Joseph W. Sanford ("Sanford") were represented by Robert E. Goldberg, Senior Counsel, Litigation Department, Merrill Lynch Pierce Fenner & Smith, Inc, New York, NY.

CASE INFORMATION

The Statement of Claim was filed March 21, 1996.

Claimant's Uniform Submission Agreement was signed March 18, 1996.

The Joint Statement of Answer of Merrill Lynch and Sanford was filed May 14, 1996.

Merrill Lynch's Uniform Submission Agreement was signed May 13, 1996.

Sanford's Uniform Submission Agreement was signed May 9, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: January 15, 1997/two sessions
 January 16, 1997/three sessions

Hearing Location: NASD, Inc.
 Washington, D.C.

CASE SUMMARY

Claimant alleged, among other things, that Respondents violated Section 2-263 of the District of Columbia Blue Sky Law and the NASD Rules of Fair Practice. In addition, Claimant alleged that Respondents breached their contract with Claimant and intentionally or recklessly engaged in a course of fraudulent acts including misrepresentations and omissions which was the direct and proximate cause of investment losses suffered by Claimant. Claimant, a retired federal government employee, alleged that he opened a cash account with Respondents in 1992. Claimant alleged that Respondents had been informed that Claimant's investment objective was growth. Claimant alleged that Respondents made

inadequate disclosures to Claimant regarding the opening of a margin account in March 1994. Claimant also alleged that Respondents induced Claimant to authorize the purchase of more and more shares of Hechinger stock on margin and failed to inform Claimant of the decline in comparable same store sales when relating an earnings report about Hechinger. Claimant alleged that Respondents exercised *de facto* control over Claimant's account. Claimant alleged that every time he contacted Respondents regarding the declining value of Hechinger stock and suggestions of selling some of the positions, Respondents urged Claimant not to sell, reassured him that they were monitoring the situation and there was nothing to worry about. Claimant alleged that his account was not diversified, being too concentrated with Hechinger stock and overleveraged. Claimant alleged those actions of Respondents, and excessive margin trading which took place in his account, resulted in unsuitable investments given Claimant's investment objectives and financial situation. Claimant alleged that Respondents breached their fiduciary obligations to him as Claimant's investment advisors because Claimant placed his faith in their expertise. Claimant alleged that Merrill Lynch failed to adequately supervise Sanford in the management of Claimant's account. Claimant alleged that Respondents' actions breached their duty of care to Claimant by recklessly or negligently and with an unreasonable lack of such skill, prudence and diligence commonly possessed and used by professionals in the securities industry. Therefore, Claimant alleged that Respondents are liable for the losses suffered by Claimant.

Respondents denied all charges of wrong-doing and liability and all claims for damages as asserted in the Statement of Claim. Respondents maintained that all purchases of Hechinger stock were initiated by the Claimant on an unsolicited basis. Respondents maintained that the majority of trades were entered by the Claimant with Sanford's registered sales assistant and not Sanford. Respondents maintained that Sanford did not solicit any Hechinger purchases. With the exception of the Claimant, Respondents maintained that Sanford had no other customers who bought or sold Hechinger stock. Respondents maintained that both prior to, and subsequent to, the period when Sanford serviced the Claimant's Merrill Lynch account (November 1992 through November 1994), the Claimant purchased Hechinger stock on margin with other brokerage firms. Respondents maintained that the Claimant's market activity at Merrill Lynch was consistent and a part of his overall pattern of investing. Respondents maintained that any losses sustained by the Claimant were the result of the Claimants' knowing and deliberate unsolicited investment decisions and market conditions.

RELIEF REQUESTED

Claimant requested damages in the amount of \$235,000.00; lost investment opportunity of \$80,000.00; interest from the date of the activities complained of until the payment of the award; costs and fees, including attorney's fees incurred as a result of this arbitration, and punitive damages in the amount of \$150,000.00.

Respondents requested that the Statement of Claim be dismissed and that all costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

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. That the Statement of Claim be dismissed.
2. That the claim for punitive damages be denied.
3. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of forum fees as discussed below.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

5 sessions x \$750.00 = \$3,750.00

Forum Fees are assessed to Claimant. Claimant is to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$3,000.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

11/21/97

Robert O. Harris

Robert O. Harris, Chairman
Public Arbitrator

Marvin Elster
Public Arbitrator

Wendie L. Wachtel
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 23, 1997

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:

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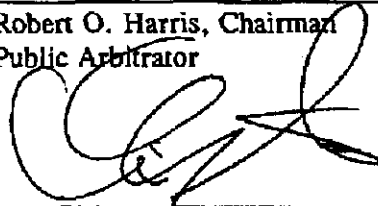
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