

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Regina T. Heidler

96-01618

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Robert A. Bowen

REPRESENTATION

Claimant Regina T. Heidler ("Claimant") was represented by David W. Mersky, Esq., Appel & Yost, Lancaster, PA.

Respondents Merrill Lynch Pierce Fenner & Smith ("MLPFS") and Robert A. Bowen ("Bowen") was represented by Charles L. Henderson, Esq., Merrill Lynch Pierce Fenner & Smith, New York, NY.

CASE INFORMATION

The Statement of Claim was filed April 15, 1996.

Claimant's Uniform Submission Agreement was signed April 10, 1996.

The Joint Statement of Answer of MLPFS and Bowen (collectively "Respondents") was filed June 28, 1996.

MLPFS's Uniform Submission Agreement was signed June 28, 1996.

Bowen's Uniform Submission Agreement was signed April 25, 1996.

HEARING INFORMATION

Hearing Date/Sessions: June 9, 1997/two sessions

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged that in February of 1993, Claimant opened an IRA account with MLPFS and Bowen was her financial consultant for this account. Claimant alleged that she transferred to this account securities Claimant held at Janney Montgomery Scott, including two hundred eleven (211) shares of Alliance North American Government Income Trust ("Alliance"), class B, which then comprised less than two percent (2%) of her priced portfolio. Thereafter, Claimant alleged that on April 28, 1993, August 5, 1993 and October 13, 1993, upon the recommendation of Bowen, \$50,032.63 was invested in Alliance. Claimant alleged that, again upon the recommendation of Bowen, Alliance dividends were

reinvested and, as a result, at the time Claimant's shares in Alliance were liquidated \$63,284.75 had been invested, which accounted for nearly twenty-five percent (25 %) of her priced portfolio. Claimant alleged that upon liquidation of this investment, Claimant suffered a loss, including Alliance's rear-end charges and sharply decreased asset value, of \$22,741.74.

Claimant alleged that at the time these purchases were recommended and executed by MLPFS, Claimant was sixty-two (62) years of age. Claimant asserted she had limited education and investment experience, a fixed income in the nature of alimony which would terminate in 1995, and had limited assets, which she needed to meet her everyday expenses beginning in 1995. As such, Claimant alleged, though interested in increasing the size of her nest egg, she was most concerned about preserving for her future the few assets she had at that time.

Claimant alleged that Bowen failed to make reasonable efforts to obtain information concerning her financial status, tax status, investment objectives and other information necessary to make suitable investment recommendations. Claimant further claimed that the purchases executed by MLPFS were recommended by Bowen without proper disclosure of the attendant risks and without reasonable grounds for believing that such purchases were suitable, given Claimant's short term needs and financial inability to encounter such a commitment. Finally, Claimant alleged that MLPFS failed to adequately supervise Bowen's investment activities and recommendations to Claimant.

Respondents denied each and every allegation asserted in the Statement of Claim. Respondents maintained that Claimant opened both an IRA account and a Cash Management Account ("CMA") in February 1993. Respondents maintained that the securities which Claimant transferred from Janney, Montgomery Scott consisted of bonds, collateralized mortgage obligations, stocks and mutual funds, one of which was Alliance. Respondents further maintained that Claimant and Bowen discussed Claimant's investment objectives, as well as her background and sophistication as to investing. Respondents maintained that Bowen had no discretion over Claimant's account and Claimant made all decisions concerning transactions in her account.

Respondents maintained that Alliance is an open-end mutual fund that invested in U.S., Mexican, Canadian and other government debt securities and is not a highly volatile stock fund. Furthermore, Respondents maintained that Claimant was already familiar with the fund from her existing ownership and she knew that the price of Alliance fluctuated as each of her three purchases with Respondents were at different prices. Respondents maintained that Claimant received a prospectus and information about Alliance when she made the original purchase at Janney, Montgomery Scott and she received a prospectus again each time she made a purchase with Respondents. Respondents maintained that Claimant knew there would be market risk and that there was exposure to Mexico and South American currency risk which contributed to the funds' high yield of 10% in 1993. In addition, Alliance was only 18.6% of Claimant's combine IRA and CMA portfolio.

Respondents raised the affirmative defenses of a failure to state a claim upon which relief can be granted; statute of limitations under federal and state laws; ratification; estoppel and waiver; and laches. Respondents maintained that Respondents acted properly and in good faith and any losses suffered by Claimant were caused by the investment decisions made by Claimant and market conditions.

RELIEF REQUESTED

Claimant requested damages of \$22,741.74; professional fees of \$6,000.00; punitive damages, treble damages; and the costs attributable to this arbitration.

Respondents requested that the claims asserted by Claimant be dismissed and that the costs of this arbitration be assessed to 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.

The panel considered Respondents' Motion to Dismiss as well as Claimant's Response thereto, and denied the Motion.

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 is denied.
2. That the claims for punitive damages and treble damages are denied.
3. That each party shall bear its own costs and expenses including attorney's fees, with the exception of Forum Fees as specified 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:

2 sessions x \$400.00 = \$800.00

Forum Fees are assessed against at \$400.00 to Claimant and \$400.00 to Respondents, jointly and severally. Claimant is to receive credit for the \$300.00 hearing session deposit previously submitted to the NASD, leaving Claimant with a net assessment due of \$100.00. Respondents have a net assessment due of \$400.00.

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

DATE

6/25/97

CONCURRING ARBITRATORS' SIGNATURES

Victoria E. Johnson
Victoria E. Johnson, Presiding
Public Arbitrator

John W. Lear
John W. Lear
Public Arbitrator

Ronald C. Zimmerman
Ronald C. Zimmerman
Industry Arbitrator

Date Decision Served by NASD Regulation:

July 11, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

6/23/97

Victoria E. Johnson, Presiding
Public Arbitrator

John W. Lear
John W. Lear
Public Arbitrator

Ronald C. Zimmerman
Industry Arbitrator

Date Decision Served by NASD Regulation: July 11, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Victoria E. Johnson, Presiding
Public Arbitrator

John W. Lear
Public Arbitrator

6-26-97

Ronald C. Zimmerman

Ronald C. Zimmerman
Industry Arbitrator

Date Decision Served by NASD Regulation:

July 11, 1997