

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Audrey Bassett

96-01815

**Name of Respondent**

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

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on April 26, 1996, Claimant Audrey Bassett ("Claimant"), who appeared Pro Se, alleged that in October of 1992, Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"), through its representative Robert Lindstrom ("Lindstrom"), recommended that she purchase shares of Hyperion 1997 ("Hyperion") which she followed to her detriment. Claimant further alleged that she began investing with Respondent in 1985 and due to over \$3,000.00 in losses by 1992, she informed Lindstrom that she wanted investments that protected principal. Claimant also alleged that Lindstrom informed her that the Hyperion 1997 fund invested in securities of the highest quality and assured her that in 1997 the principal amount would be intact. Claimant contended that she purchased \$43,000.00 of Hyperion 1997 and received a prospectus with the purchase confirmation sheet. Claimant further contended that by the middle of 1993, the value had declined yet Lindstrom continued to assure her that her investment was safe despite the declining price. Claimant also contended that she sold the investment in February of 1996 losing \$11,288.00. Claimant asserted that as a result of the above, she has suffered a loss for which the Respondent should be held liable.

Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. through its representative and in-house counsel, Christopher D. Cavuoti, Esq., maintained Claimant opened an account with it in 1985 and that in October of 1992, after experiencing some disappointing investment results, she met with Lindstrom to discuss investment alternatives. Respondent further maintained that Claimant declined U.S. Treasury Securities stating that the yield was too low so Lindstrom presented and sold to Claimant the Hyperion 1997 Term Trust. Respondent also contended that Hyperion invested in securities of the highest credit quality and had the objective of returning at least the \$10.00 initial public offering purchase price to investors. Respondent contended that no

assurances regarding safety of principal were made. Respondent further contended that Claimant received a prospectus and over \$8,000.00 in income distributions. Respondent further contended that Claimant held the investment for over two years, thereby indicating her willingness to continue to assume the risk of market fluctuation. Respondent also contended that as a result of the above, it should not be held liable.

### **RELIEF REQUESTED**

Claimant Audrey Bassett requested \$10,000.00 in actual damages

Respondent requested that the claims be dismissed in their entirety.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David E. Muschler, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 24, 1996, and by the Respondent on June 21, 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 the Claimant Audrey Bassett against Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
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. Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. shall pay to the Claimant Audrey Bassett \$75.00 as reimbursement of one-half of the filing fee.

### **AFFIRMATION**

I, DAVID E. MUSCHLER, 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.



Signature of Arbitrator

DATE OF DECISION: September 3, 1996