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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

Michael and Lorraine O'Connell

NASD Case Number 96-02514

Names of Respondents

**Merrill Lynch, Pierce, Fenner & Smith, Inc.
Arthur Barzilay**

REPRESENTATION

Claimants Michael and Lorraine O'Connell ("the O'Connells") appeared pro se.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Arthur Barzilay ("Barzilay"): John C. Kelly, Esq. of Ackerman Link & Sartory, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: May 1, 1996.

Claimants' Submission Agreement signed: June 11, 1996.

Joint Statement of Answer filed by Respondents: August 21, 1996

Respondent Merrill's Submission Agreement/Corporate Acknowledgment signed: August 27, 1996, by Cathy Conway-Yaffe on behalf of the firm.

Respondent Barzilay's Submission Agreement signed: August 22, 1996.

HEARING INFORMATION

On November 8, 1996 and February 10, 1997 telephonic pre hearing conferences lasting two (2) sessions were conducted with the Chairperson.

On April 23, 1997 a hearing lasting one (1) session was conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimants alleged that Respondents are liable for losses resulting from the purchase and sale of Health Care Infusion, Inc. stock for their account at Merrill and that Respondent Barzilay failed to advise them to sell the stock at the height of its market price, causing them substantial losses.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and asserted a counterclaim against the Claimants in connection with an outstanding debit in Claimants' account caused by the unpaid purchase of Bio Control Industries stock. Respondents maintained that Claimants filed their Statement of Claim regarding unrelated transactions which occurred as much as five years earlier when Merrill attempted to collect on this debt; and, that Claimants are seeking an award simply on the basis that they did not choose to sell their stock at the right time.

RELIEF REQUESTED

Claimants requested an award of damages in the amount of \$42,000.00 and that Respondents' counterclaim be dismissed.

Respondents requested dismissal of all claims against them and that they be awarded relief on their counterclaim in the amount of \$8,607.20 plus interest, attorneys' fees and costs.

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 NASD Regulation, Inc.

AWARD

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

1. Respondents Merrill and Barzilay are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants are found liable, jointly and severally, and shall pay to Respondent, Merrill, the sum of \$5,000.00 for the counterclaim.
3. Respondents' requests for interest, attorneys' fees and costs are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,100.00 (one (1) hearing session x \$500.00 + two (2) pre hearing conferences x \$300.00.

1. Claimants are assessed, jointly and severally, forum fees in the amount of \$500.00 payable to NASD Regulation, Inc.
2. Respondents are assessed, jointly and severally, forum fees in the amount of \$600.00 for which NASD Regulation, Inc. shall retain the \$300.00 previously deposited by Respondents in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Respondents in the amount of \$300.00.
3. NASD Regulation, Inc. shall retain the \$120.00 claim filing fee paid by the Claimants.
4. Pursuant to Rule 10333 of the Code, Respondent Merrill shall pay to NASD Regulation, Inc. the \$200.00 past due member surcharge which was previously invoiced.

Fees are payable to the NASD Regulation, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Nancy Cliff, Esq.

Public/Chairperson

/s/

Adam Matthew Moskowitz

Public/Panelist

/s/

Raymond W. Snow

Industry/Panelist

Date of Decision: May 27, 1997

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