

9/10/71

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Martha W. Dickson
Jeptha William Dickson Trust
Martha W. Dickson Revocable Trust

96-02734

Name of Respondents

*Merrill Lynch Pierce Fenner & Smith, Inc.
Albert R. Lucci
Dean Witter Reynolds, Inc.

REPRESENTATION

For Claimants: Joel S. Hanover, Esq., Vero Beach, FL.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Albert R. Lucci: Marianne Bretton-Granatoor, Esq. of Merrill Lynch Pierce Fenner & Smith Inc., New York, NY. (see "Other Issues")

For Respondents Dean Witter Reynolds, Inc. and Albert R. Lucci: James D. Yellen, Esq. of Dean Witter Reynolds, Inc., New York, NY. (see "Other Issues")

CASE INFORMATION

Statement of Claim filed: May 17, 1996.

Amended Statement of Claim filed: November 1, 1996.

Claimants' Submission Agreements signed on: July 3, 1996.

Statement of Answer filed by Respondents Dean Witter Reynolds, Inc. and Albert R. Lucci on: October 3, 1996.

Statement of Answer filed by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on: October 4, 1996.

Statement of Answer to Amended Statement of Claim filed by Respondents Merrill Lynch Pierce

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Fenner & Smith, Inc. and Albert R. Lucci on: December 16, 1996.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc.'s Submission Agreement signed on: October 3, 1996.

Respondent Albert R. Lucci's Submission Agreement signed on: September 30, 1996.

Respondent Dean Witter Reynolds, Inc. did not execute a Submission Agreement.

HEARING INFORMATION

On November 22, 1996, a telephonic pre-hearing conference lasting one session was conducted with the arbitration panel.

On April 24, 1997, a telephonic pre-hearing conference lasting one session was conducted with the Chairperson.

On April 29 and 30, 1997, in Tampa, Florida hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant Martha Dickson alleged that while her husband was alive the Respondents invested Claimants' money in very safe, capital preserving investments, including municipal bonds. Claimant Martha Dickson further alleged that after the passing of her husband, Respondents increased Claimants' trading activity and advised Claimant Martha Dickson to invest in bonds, mutual funds and limited partnerships which were not suitable for her and had greater risk than the investments made before her husband passed away. Claimants further alleged that Respondents never explained to Claimant that her capital would be at risk and that there was a chance for loss of capital.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Albert R. Lucci denied Claimants' allegations and maintained that the transactions recommended to Claimants were suitable, that the increase in trading activity was approved by the Claimants, and that the Claimants' alleged losses were the result of adverse market conditions. Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Albert R. Lucci alleged the following affirmative defenses: failure to state a claim; failure to mitigate; statute of limitations; laches; estoppel; and that the Claimant was negligent in the supervision of her financial affairs.

Respondents Dean Witter Reynolds Inc. and Albert R. Lucci filed an Answer denying all allegations in the Statement of Claim and alleged that they should not be held responsible for alleged losses related to purchases of securities that did not take place at Dean Witter Reynolds Inc.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$108,261.00, lost interest at 10% average on total account investments for seven (7) years, plus costs, expenses, filing fees and

hearing session deposits totaling \$6,363.05. The Claimants further requested attorneys' fees and other relief as deemed appropriate by the arbitration panel.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Albert R. Lucci requested that the claim be dismissed in its entirety or, in the alternative, that the portion of the Statement of Claim pertaining to Claimants' limited partnership investments be dismissed and that they be awarded attorneys' fees and arbitration costs. Respondent Albert R. Lucci further requested that all references to this arbitration be expunged from his CRD record.

Respondents Dean Witter Reynolds Inc. and Albert R. Lucci requested that the claim be dismissed in its entirety and that they be awarded attorneys' fees and arbitration costs.

OTHER ISSUES CONSIDERED & DECIDED

On October 15, 1996 the Claimants dismissed, with prejudice, Respondent Dean Witter Reynolds, Inc. from this arbitration.

Respondent Albert R. Lucci was represented by attorney James D. Yellen until Respondent Dean Witter Reynolds, Inc., was dismissed at which time attorney Marianne Bretton-Granatoor commenced representation of Respondent Albert R. Lucci.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims against Respondent Albert R. Lucci are dismissed in their entirety.
- 2) All references to this arbitration shall be expunged from Respondent Albert R. Lucci's CRD record.
- 3) Claimants' claims for damages concerning her bond and bond fund investments are denied.
- 4) Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is found liable with regard to Claimants' limited partnership investments and shall pay to Claimants, collectively, the sum of \$30,000.00, inclusive of interest.
- 5) The parties' requests for attorneys' fees and costs are denied.

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FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$4,050.00 (one pre-hearing conference with the full panel x \$750.00 plus one pre-hearing conference with the Chairperson x \$300.00 plus four hearing sessions x \$750.00).

- 1) Claimant is hereby assessed \$2,025.00 for which National Association of Securities Dealers Regulation, Inc. shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to National Association of Securities Dealers Regulation, Inc. of \$1,525.00.
- 2) Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby assessed \$2,025.00.
- 3) Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby assessed the sum of \$300.00 representing the member surcharge pursuant to Rule 10333 of the Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

Public/Industry

/S/
Thomas E. Greef
Chairperson

Public

/S/

Norman Morris

Industry

/S/

Paula E. Flora

Public

7/2/97

Date of Decision: _____