

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Evelyn K. Cooper Trust
by trustees
Evelyn K. Cooper, Robert Cooper & Hinton Nobles

96-03245

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Val P. Thomas

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on July 29, 1996, with a supplement filed on January 8, 1997, claimant Evelyn K. Cooper Trust ("claimant"), by the trustees Evelyn K. Cooper, Robert Cooper and Hinton Nobles, who appeared Pro Se, alleged that respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Val P. Thomas ("Thomas") accepted an order from Nobles on June 12, 1995 to sell 5 Bank of New York convertible bonds ("bonds") at the price of \$209.50 or higher. Claimant further alleged that the bonds continued to appear on their monthly statements. Claimants argued that on March 28, 1996 Merrill Lynch retroactively sold the bonds at the price of \$209.50 even though claimant's last monthly statement "estimated" the market value at \$264.70 as of February 29, 1996.

Claimant further argued that the March 1996 statement indicated Merrill Lynch had acted as a principal in that transaction and profited by \$2,760.00. According to claimant, in April 1996 Merrill Lynch debited all bond interest received by the Trust from the bonds over the previous 9 months and credited the amount of interest that the Trust would have received if the proceeds from the June 1995 sale had been invested in a Money Market Account. Claimant contended that in March 1996 Thomas called Nobles to inform Nobles that Merrill Lynch was about to execute the June 12, 1996 sell order and despite Nobles' protest, Merrill Lynch executed the order. In claimant's supplement to the Statement of Claim, claimant alleged Merrill Lynch admitted it had made an operational mistake and argued that Merrill Lynch was the beneficiary mistake.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Val P. Thomas (collectively referred to as "respondents"), through their representative Christopher D. Cavuoti, Esq., in-house counsel for Merrill Lynch, denied any and all allegations of claimant. Respondents maintained that the bonds were sold on June 12, 1996 at the \$209.50 price, however because of an operational error the trade remained unsettled until March 28, 1996. Respondents further maintained that the bonds were held in a different account even though claimant's monthly statements continued to reflect that the bonds were in claimant's account and they continued to receive interest. Respondents stated that when a member of the convertible desk realized the trade had not settled, the trade was settled immediately and claimant's account was debited for the interest received and credited \$445.02, representing the money market interest that would have been earned had the trade timely settled.

Respondents contended that claimant was a sophisticated and experienced investor who failed to question why he did not get a confirmation of his June 12, 1996 order. Respondents further argued that claimant was not harmed by the delayed settlement. As affirmative defenses, respondents argued that they acted in a commercially reasonable manner, that the claims are barred by the theories of estoppel, ratification and assumption of risk, claimant failed to state a cause of action, and that claimant has not suffered any damages.

RELIEF REQUESTED

Claimant requested compensatory damages of \$2,760.00 plus interest at the statutory rate of 8% from March 28, 1996 until the date the decision is entered plus cost and expenses.

Respondents requested that the claim be denied in all respects and that claimant be assessed the costs.

AWARD

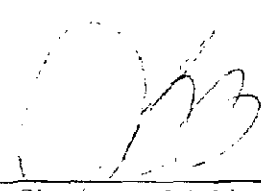
Pursuant to Rule 10302 of NASD Regulation, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph L. Bernstein, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by trustee Hinton Nobles, Jr. for the claimant Evelyn K. Cooper Trust on July 22, 1996 and by respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on October 15, 1996. Respondent Val P. Thomas did not execute a Submission Agreement as required by Rule 10301 and 10302 of the NASD Code of Arbitration Procedure.

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 claimant Evelyn K. Cooper Trust against respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Val P. Thomas are dismissed in their entirety.
2. All other relief requests are denied.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant Evelyn K. Cooper Trust shall be retained by NASD Regulation, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Val P. Thomas are jointly and severally liable and shall pay to the claimant Evelyn K. Cooper Trust \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, **JOSEPH L. BERNSTEIN**, 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: June 5, 1997