

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William P. Gore

96-03488

Name of Respondents

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

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 13, 1996, claimant William P. Gore ("Gore"), who appeared Pro Se, alleged that respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") through its representative, Wayne Gregory ("Gregory"), misled him into purchasing shares of Hyperion 1999 Term Trust, Inc. ("Trust") to his detriment. Claimant further alleged that during the week of June 25, 1992, Gregory, his MLPFS financial consultant, made numerous phone calls to him urging that he purchase shares of the Trust. Claimant also alleged that Gregory told him the Fund was ideal for his retirement account as it was low risk gave current income and would return the original investment. Claimant contended that Gregory also told him that the Fund was special because Lewis Ranieri, the father of the great mortgage backed securities market, had founded it. Claimant further contended that he was not informed that the Fund would invest in IO's, PO's and derivatives which are high risk investments. Claimant also contended that the Fund's risk was not discussed with him. Claimant asserted that the Fund was not conservative enough for his individual retirement account and that his financial security depends on social security and his investments.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Wayne Gregory ("respondents") through their representative and in-house counsel, Christopher D. Cavuoti, Esq., denied all allegations of wrongdoing. Respondents maintained that in December of 1981, claimant opened an IRA with MLPFS and that he desired income and conservative risk investments. Respondents also maintained that claimant desired higher income than he was getting so in June of 1992, he purchase the Fund and shortly thereafter received a prospectus. Respondents contended that the Fund was highly rated and given a AAA by Standard & Poors and was run by very experienced managers including Lewis Raineri, a former Vice-Chairman of Salomon Brothers. Respondents further contended that risks associated with this investment were disclosed to claimant.

Respondents also contended that these risks included interest rate sensitivity. Respondents also contended that the very significant and unexpected decline in interest rates, and ensuing disproportionate increase in the prepayment of home mortgages that occurred following the Funds offering, adversely affected its market performance. Respondents asserted that although the Fund has experienced price fluctuations, it was paid substantial dividends and that claimant's losses are lower than alleged.

RELIEF REQUESTED

Claimant William P. Gore requested \$10,000.00 in actual damages.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Wayne Gregory requested that the claims be dismissed in their entirety.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David G. Beerbower, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on April 19, 1996, and by respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. on October 7, 1996, and Wayne Gregory on September 27, 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 William P. Gore against respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Wayne Gregory are denied in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
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.
4. All other relief requests are denied.

AFFIRMATION

I, David G. Beerbower, Esq., 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.

A handwritten signature in cursive script, reading "David G. Beerbower", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: December 23, 1996