

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Muriel Converse, as Trustee of  
Market Research Associates, Inc. Retirement Trust

96-03568

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on August 19, 1996, claimant Muriel Converse, as Trustee of Market Research Associates Inc., Retirement Trust ("Trust" or "claimant"), through its representative and counsel, Daniel Converse, Esq. located in Ann Arbor, Michigan alleged that respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") excessively charged the Trust. Claimant further alleged that on December 30, 1994, it entered into an agreement with Merrill Lynch by which Merrill Lynch agreed to act as custodian of its assets and to execute buy and sell orders. Claimant also alleged that the contract agreed to pay Merrill Lynch a fee equal to 1/12 of one percent per month of the amount the Trust had on deposit. Claimant asserted that on January 18, 1995, it directed Merrill Lynch to purchase certain US Treasury Strips ("Bonds") for the trust account. Claimant further asserted that Merrill Lynch supplied those Bonds from its own inventory of securities, and charged the Trust.

Claimant also asserted that on numerous occasions it asked Merrill Lynch to provide information regarding the purchase of the Bonds. Claimant contended that Merrill Lynch refused to provide information on the bonds mark-ups, the price of the securities at the time of the sales, and evidence to justify the charges for the securities other than its "self serving statements that it had checked the market". Claimant further contended that Merrill Lynch had no right under the arrangement to sell it securities from their inventory to fulfill the order rather than purchasing securities in the market. Claimant also contended that Merrill Lynch had an obligation to adequately explain how it arrived at the price it charged the Trust. Claimant alleged that (a) Merrill Lynch charges exceeded what traders were willing to sell the securities for on the day transaction, (b) that it had not agreed to pay Merrill Lynch a "secret" mark-up and (c) that even if Merrill Lynch was originally entitled to a custodial fee, it forfeited that entitlement by failing to provide a reasonable explanation of the charges.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("respondent"), through its representative and in-house counsel Christopher D. Cavuoti, Esq., maintained that claimant's Retirement Cash Management Account (RCMA) Annual Custodial Fee is a flat fee and is not based on the account's asset value. Respondent further maintained that claimant discussed the purchase of the Bonds on several occasions with the financial consultant assigned to the account, and approved the purchase of each Bond.

Respondent also maintained that claimant was told that bonds prices are market sensitive and fluctuate over the course of the trading day. Respondent contended that claimant is basing its claim on price quotations from the Wall Street Journal ("WSJ"). Respondent further contended that claimant was told several times that the price quotations in the WSJ are institutional prices and could not be compared to retail prices.

Respondent also contended that when a brokerage firm acts as principal on a Treasury transaction, the firm is not required to disclose the mark-up on the purchase confirmation. Respondent further contended that claimant paid a competitive price for an odd-lot retail bond transaction purchased through a full service brokerage firm. Respondent further maintained the claimant was told the price and the yield of maturity before it approved a purchase order of the bonds.

### **RELIEF REQUESTED**

Claimant Muriel Converse, as Trustee of the Market Research Associates, Inc., Retirement Trust requested \$3,672.61 in actual damages, which is the difference between Merrill Lynch's charges for the securities in question and their market value according to the Wall Street Journal.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., requested that the claims of claimant be dismissed in their entirety, with costs of this proceeding being assessed against claimant.

### **AWARD**

Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public arbitrator Richard G. Porter, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Muriel Converse, as Trustee of the Market Research Associates, Inc., Retirement Trust on September 17, 1996 and by respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on October 21, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues for determination as follows:

1. The claims of claimant Muriel Converse, as Trustee of the Market Research Associates, Inc., Retirement Trust against respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc by claimant shall be retained by NASD Regulation, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay claimant Muriel Converse, as Trustee of the Market Research Associates, Inc., Retirement Trust, the sum of \$125.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **Richard G. Porter, 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, appearing to read "Richard G. Porter", is written over a horizontal line.

Richard G. Porter, Esq.

Date of Decision: February 11, 1997