

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Michael H. & Kiera Williams Stock

96-04208

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Michael Livernois

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 20, 1996, claimants Michael and Kiera Stock ("claimants"), who appeared Pro Se, alleged that respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Michael Livernois ("Livernois") made an unsuitable investment for their short term investment needs. Claimants further alleged that based upon an initial meeting with Livernois and Kiera Stock, claimants decided to rely upon Livernois professional advice. Claimants also alleged that on September 18, 1995, they met with Livernois to discuss their specific financial needs. Claimants asserted that they wanted their initial investment of \$4,000 to grow to \$6,000.00 to \$8,000.00 in a 6 to 8 month period and that they were interested in investing in one or two high performing stocks.

Claimants further asserted that Livernois discouraged them from investing in the common market stating that \$4,000.00 was not enough money to do so. Claimants also asserted that Livernois recommended investing in an IPO, but that none were available at that time. Claimants contended that Livernois then recommended that they purchase Merrill Lynch Equity Income Fund Select Growth Series III, a Unit Investment Trust (the "Fund"). Claimants further contended the Fund was the only viable option presented to them by Livernois. Claimants also contended that they trusted Livernois' advice to be sound and accurate and that the investment he recommended would be suitable to their goals. Claimants alleged that the fund immediately began to lose money and Kiera Stock asked Livernois on two separate occasions if he thought they should get out or stay invested in the fund. Claimants further alleged that on both occasions Livernois recommended staying in the fund.

Claimants also alleged that they wrote a letter to Stephen Lyders ("Lyders") Merrill Lynch's Senior Resident Vice President requesting that their remaining investment in the Fund be cashed out without any fees or penalties. Claimants asserted that they also informed Lyders that they were considering an arbitration case against them. Claimants further asserted that on July 15, 1996 Livernois contacted Michael Stock and informed him that the monies would be forwarded and that no penalties or fees would be charged for withdrawing the money. Claimant also asserted that they were charged with withdrawing the money.

Respondents Merrill Lynch and Livernois (collectively referred to as "respondents") through their representative and in-house counsel Christopher D. Cavuoti, maintained that claimants informed Livernois that their objective was to have their \$4,000.00 investment realize a return of between approximately 50% and 100%, within six to eight months. Respondents further maintained that claimants stated their investment objective was total return and their stated risk factor was aggressive. Respondents also maintained that Livernois informed claimants that their return objective was unrealistic, but claimants expressed their determination to adhere to their investment objective for high return through equity investing. Respondents contended that Livernois explained the risks involved with short-term equity investments, in particular the higher the expected return on the investment, the greater the risk involved. Respondents further contended that claimants conveyed their willingness to accept the risk.

Respondents also contended Livernois recommended the Merrill Lynch Select Ten Growth Portfolio ("Select Ten") to claimants. Respondents maintained that claimants were sent a prospectus outlining the possible risks and potential benefits of the Select Ten and the cover stated that "there can be no assurance that the fund will achieve its objective." Respondents further maintained that the fund had an investment of a one year time frame and included a feature whereby investors were able to liquidate stocks at any time without further costs, which conformed to the claimants request that their funds be invested for a time period of six to eight months. Respondents also maintained that Livernois believed that this fund would provide claimants the opportunity to achieve their goals, with more diversification and safety and less risk and less cost than the claimants' initial proposal.

Respondents contended that Livernois was aware that the past performance of the two previous Select Ten funds were excellent. Respondents further contended that Livernois on three separate occasions discussed with claimants that the fund was not doing so well and would need some time to possibly rebound in value. Respondents also contended that the fund had a roll over feature whereby if claimants continued to hold their position until the portfolio was about to be liquidated, they would have had the option to roll the proceeds in to the next Select Growth portfolio. Respondents maintained that Livernois provided suitable investment advice to claimant in light of their return and investment objectives.

RELIEF REQUESTED

Claimants Michael and Kiera Stock requested \$2,450.36 in damages.

Respondents Merrill Lynch and Livernois requested that the claims of claimant be dismissed in their entirety.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Barry Goldman, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimants Michael and Kiera Stock on September 3, 1996 and by respondents Merrill Lynch on November 18, 1996 and Michael Livernois on October 29, 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 claimants Michael and Kiera Stock against respondents Merrill Lynch and Michael Livernois are dismissed in their entirety.
2. The \$50.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimants shall be retained by the NASD Regulation, Inc.
3. All other relief requests are denied.

AFFIRMATION

I, **Barry Goldman, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Barry Goldman, Esq.

Date of Decision: March 6, 1997