

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

The Hilda E. Dickey Trust

96-05311

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Brian K. Beckwith

REPRESENTATION

Claimant The Hilda E. Dickey Trust ("Claimant") was represented by David R. Dickey, Arlington, VA.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Brian K. Beckwith ("Beckwith") were represented by Howard Sawransky, Vice President and General Counsel, Merrill Lynch Pierce Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed November 27, 1996.

Claimant's Uniform Submission Agreement was signed December 19, 1996.

The Joint Statement of Answer for Respondents MLPFS and Beckwith (collectively "Respondents") was filed March 6, 1997.

MLPFS did not submit an executed agreement to arbitrate.

Beckwith's Uniform Submission Agreement was signed March 6, 1997.

HEARING INFORMATION

Hearing Date/Sessions: September 11, 1997

Hearing Location: NASD Regulation Headquarters
Washington, D.C.

CASE SUMMARY

Claimant alleged, among other things, that Hilda Dickey ("Mrs. Dickey") was a completely inexperienced and unsophisticated investor and Respondents took advantage of that to induce her to authorize transactions in unsuitable securities. Claimant asserted that Respondents had repeatedly been informed by Mrs. Dickey that because she was seventy-four (74) years old and her social security income was small, her investment goal was monthly income but with minimal risk. Claimant also alleged that Mrs. Dickey made it abundantly clear that due to her inexperience, she was reposing her faith and trust in Respondents. Claimant alleged that Mrs. Dickey informed Beckwith that she had two annuities coming to maturity; the first in the amount of \$100,000.00 and the second in the amount of \$50,000.00.

Claimant alleged that Respondents recommended that Mrs. Dickey put 25% of her initial annuity funds in Blackstone/Blackrock (North American Government Trust). Claimant asserted that Respondents did this knowing that Blackstone/Blackrock was subject to currency volatility and was far riskier than Mrs. Dickey had indicated she was interested in. Claimant alleged that Respondents did not bother to show Mrs. Dickey how to read her account statements and did not explain why her investment was declining even in an advancing market. When Mrs. Dickey expressed alarm when she realized that she had lost principal on Blackstone/Blackrock, she was assured that things would improve. Claimant alleged that Respondents then convinced Mrs. Dickey to invest the second annuity in Templeton Global which was an even riskier security than Blackstone/Blackrock. Claimant alleged that Templeton Global was totally unsuitable for a customer of Mrs. Dickey's profile. Claimant further alleged that when Mrs. Dickey tried to get some explanation as to why her investment in Templeton Global was declining as severely as Blackstone/Blackrock, even in an ever increasing market, she received no response to her letters and only empty promises to her telephone calls. Finally, after nearly three months, Claimant alleged that Mrs. Dickey received a letter from Respondents' Office of General Counsel, which basically informed her that she had been told everything she needed to know to make appropriate decisions on her investments.

Claimant alleged that when Mrs. Dickey told Beckwith to liquidate Templeton Global in January 1994, he convinced her to invest the funds in a Merrill Lynch Corporate Bond Fund. What Beckwith failed to be clear on with Mrs. Dickey was that the Bond Fund had a five-year term which was inappropriate for a woman nearly seventy-seven years old. Claimant alleged that this recommendation was made solely for the benefit of Respondents because a company fund has significant incentives for the broker which an experienced investor would have realized.

Overall, Claimant alleged that Respondents' negligent management of Mrs. Dickey's account resulted in a twenty percent (20%) loss of principal and the stress damaged her overall health. Claimant alleged that MLPFS failed to appropriately supervise Beckwith and failed to respond to Mrs. Dickey's inquiries. Claimant alleged that it took nearly one year after Mrs. Dickey's death in May 1995, to get the name and address changed on the account, despite numerous letters and telephone calls to MLPFS. Claimant alleged that Respondents were negligent and breached their fiduciary duty to Mrs. Dickey.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Mrs. Dickey and her son, David Dickey, an attorney, opened a joint account in February 1985. Respondents maintained that Mrs. Dickey stated initially, and continued to confirm, that she was primarily interested in income oriented investments, especially those which generated a high income and monthly payout. Respondents maintained that Mrs. Dickey also informed Respondents that she realized that in order to achieve substantial monthly income some fluctuation was acceptable, given that she did not anticipate needing the principal immediately as she had other liquid assets. Respondents maintained that Mrs. Dickey indicated that she had a net worth of approximately \$500,000.00 and an approximately annual income of \$28,000.00. In addition, Respondents asserted that Mrs. Dickey informed them that she had dealt with another broker for many years. Therefore, Respondents maintained that Mrs. Dickey was not an inexperienced investor, and that the investment recommendations made to her were consistent with her stated investment objectives as well as her general investor profile.

Respondents maintained that Blackstone/Blackrock is a closed-end fund whose investment objective is to provide high current monthly income consistent with the preservation of capital, by investing in high grade short-term Canadian and U.S. dollar-denominated securities. Respondents further stated that all of Blackstone/Blackrock's assets are government securities rated AAA at the time of investment by Standard & Poor's Corp. In addition, Respondents affirmed that Templeton Global is also a closed-end fund whose principal investment objective is to provide high current income and capital appreciation.

Respondents stated that Templeton may invest in any debt security, not in default, and is rated from AAA to CC by Standard & Poor's Corp. Therefore, there was a reasonable basis for the recommendation of both Blackstone/Blackrock and Templeton Global for Mrs. Dickey so as to provide the high monthly income Mrs. Dickey desired as well as her willingness to accept some fluctuation as part of a balanced investment program.

Respondents maintained that all recommendations were made consistent with Mrs. Dickey's stated investment objectives and there is no basis of any claims of unsuitability at the time the investment recommendations were made. Respondents further maintained that Beckwith was properly supervised and that any losses sustained by Mrs. Dickey were caused by general market conditions and economic forces unrelated to Respondents' conduct.

Respondents also raised the affirmative defenses of a failure to state a claim for which relief may be granted; each transaction was approved and authorized in advance; ratification; any loss was proximately caused by Mrs. Dickey's own decisions and/or negligence; and a failure to mitigate.

RELIEF REQUESTED

Claimant requested damages in the amount of \$26,453.00; disgorgement of all fees and commissions; punitive damages as well as all fees and costs of this arbitration.

Respondents requested that the Statement of Claim be denied in all respects and that the costs of the proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD.

Respondent Merrill Lynch Pierce Fenner and Smith, Inc. did not file with the NASD Regulation a properly executed submission to arbitrate but is required to submit to arbitration pursuant to Rule 10301 of the NASD Regulation Code of Arbitration Procedure ("Code"), therefore the panel determined that Merrill Lynch Pierce Fenner and Smith, Inc. is bound by all decisions of the panel.

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. That the Statement of Claim is denied.
2. That the claim for punitive damages is denied.
3. That Respondent MLPFS is liable to and shall reimburse to Claimant the \$400.00 hearing session deposit previously submitted to the NASD Regulation by Claimant.
4. That each party shall bear its own costs and expenses.
5. That any and all relief not specifically addressed herein is denied.

Code
OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is assessed a member surcharge of \$200.00. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. shall receive credit for the \$200.00 member surcharge previously submitted to the NASD Regulation, leaving no further member surcharge due.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

2 sessions x \$400.00 = \$800.00

Forum Fees are assessed to Respondent Merrill Lynch Pierce Fenner and Smith, Inc.. Respondent Merrill Lynch Pierce Fenner and Smith, Inc. shall receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation by Claimant, and reimbursed directly to Claimant as ordered by the panel, leaving a net assessment to Respondent Merrill Lynch Pierce Fenner and Smith of \$400.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

9/26/97

Michael Fischetti

Michael Fischetti, Presiding
Public Arbitrator

Frank J. Wilson
Public Arbitrator

Alexander I. Heckman
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 29, 1997

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