

ARBITRATION AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Albert M. and Camilla A. Flamini

96-05406

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.;
Charles Douthit

REPRESENTATION

For Claimants: Albert M. Flamini and Camilla A. Flamini ("Flamini") were represented by Robert W. Edler, Esq. of Thiedmann & Edler, located in Chicago, Illinois.

For Respondents: Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Charles Douthit ("Douthit") were represented by Peter Cantwell, Esq. of Cantwell & Cantwell, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: December 6, 1996.

Claimants' Submission Agreement signed on: November 25, 1996.

Amended Statement of Claim filed: March 23, 1997.

Statement of Answer filed by Respondents on: February 19, 1997.

Respondent Merrill's Submission Agreement signed on: February 6, 1997 by Marianne Bretton-Granatoor, Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent Douthit did not file an executed submission agreement.

Respondents' Answer to Amended Statement of Claim filed on: May 6, 1997.

HEARING INFORMATION

Pre-Hearing Conference: May 21, 1997 for One (1) session before One (1) arbitrator;
May 21, 1997 for One (1) session before One (1) arbitrator; and
June 6, 1997 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: June 17, 1997 for Two (2) sessions;
June 18, 1997 for Two (2) session;
August 22, 1997 for Two (2) sessions;
August 23, 1997 for Two (2) sessions;
September 2, 1997 for One (1) session;
September 3, 1997 for Two (2) sessions;
September 4, 1997 for Two (2) sessions;
September 5, 1997 for Three (3) sessions;
October 14, 1997 for One (1) session;
October 15, 1997 for Two (2) sessions; and
October 16, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondent Douthit, while employed by or acting as an agent for Respondent Merrill, misrepresented the risks of investments in CMO's in order to induce Claimants to purchase securities which were unsuitable given the Flamini's age, investment objectives and life status. Based upon these allegations, the Claimants asserted claims for common law negligence; negligent failure to supervise; intentional misrepresentation and omission of material facts; breach of contract; and intentional misrepresentation and omission of material facts regarding fact that Merrill was acting as principal in transactions described to Claimants as agency transactions.

Respondents denied the material allegations of the Claims, alleging that Claimants authorized each transaction and were kept apprised of the status of the account at all times. In addition, Respondents asserted that the recommended securities were suitable for the Claimants and that any reduction in the value of the account resulted from the under performance of certain investments and Claimants' withdrawals from principal.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents for actual losses in the sum of \$51,403.36; interest at the rate of 6.5% per annum from March 4, 1996 until the sum is paid; punitive damages; costs; reasonable attorneys' fees and expenses; and such other relief as the panel determined was proper.

Respondents requested that the Claim be dismissed in its entirety; an award of attorneys' fees and costs; and that the registration file of Douthit be expunged of this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Douthit did not file an executed submission agreement, but is required to submit to arbitration pursuant to Section 10301 of the Code of Arbitration Procedure.

On February 10, 1997, Claimants filed a Motion to Bar Respondents from answering the claim pursuant to Section 10314(b)(2)(C) of the Code of Arbitration Procedure. Respondents' Response to the motion was filed February 21, 1997. The Panel denied the Motion on April 3, 1997.

Claimants filed a Motion to Amend on March 24, 1997. Respondents filed a response on April 11, 1997. The panel granted the Motion on May 16, 1997.

The parties filed numerous post-hearing submissions. The final post-hearing submission was sent to the panel on February 2, 1998.

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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Charles Douthit are jointly and severally liable for and shall pay to the Claimants, Albert M. Flamini and Camilla A. Flamini, the sum of \$25,000.00 as actual damages;
2. The claims for punitive damages are dismissed with prejudice and denied in the entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Section 10333 of the Code of Arbitration Procedure, Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge in the sum of \$500.00.

FORUM FEES

Pursuant to Section 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) pre-hearing sessions before One (1) arbitrator x \$300.00 = \$900.00; Twenty-One (21) hearing sessions x \$1,000.00 per session = \$21,000.00; Total forum fees = \$21,900.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$250.00 non-refundable filing fee and, as forum fees, the \$1,000.00 hearing session deposit paid by the Claimants, Albert M. Flamini and Camilla A. Flamini. In addition, Claimants Albert M. Flamini and Camilla A. Flamini are liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution additional forum fees in the sum of \$9,950.00. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Charles Douthit are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$10,950.00.

Concurring Arbitrators' Signatures
Name

Date

/s/ James L. Schwartz, Esq.
James L. Schwartz, Esq.
Public Arbitrator
Chairperson

March 11, 1998

/s/ Ray J. Grzebielski, Esq.
Ray J. Grzebielski, Esq.
Public Arbitrator

March 13, 1998

/s/ Robert Biondi
Robert Biondi
Industry Arbitrator

March 11, 1998

For ODR Use ONLY/Date of Decision: March 23, 1998