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NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimants

Maureen and Paul Belanger

97-00167

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

REPRESENTATION

Claimants Maureen and Paul Belanger ("Claimants") appeared pro se.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") appeared Howard C. Sawransky, Esq., Assistant Vice President of Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim was filed on January 8, 1997. Claimants' Submission Agreement was signed on January 9, 1997.

Statement of Answer filed on March 3, 1997. Respondent's Submission Agreement was signed on March 3, 1997.

HEARING INFORMATION

Hearing Dates/Sessions: September 19, 1997 - One Session

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that Respondent breached the fiduciary duty owed to them by not timely notifying them that the AIM Aggressive Growth Fund ("AAGF"), a fund in which Claimants wished to invest as of January 1995, would be closed to new investments as of May 1994. Claimants contended that Respondent failed to provide information that only it knew and could receive on Claimants' behalf. Claimants further contended that AIM management notified

Respondent of the impending close of the AAGF by telephone and by mail as early as March 1994, thereby giving Respondent enough time to notify its own clients of the same.

In addition, Claimants alleged that Respondent failed to adequately supervise its agents in violation of NASD and SEC regulations. Claimants further alleged that Respondent charged excessive maintenance and closing fees when their account was opened and that Respondent failed to refund the applicable portion of the custodial fee when their account was closed. In addition, Claimants alleged that Respondent made an unauthorized withdrawal from their SEP/IRA account in the amount of \$2,043.68.

Respondent maintained that it was not obligated to inform Claimant's of AAGF's closing since Claimants neither expressed an interest in nor owned the security. Regarding account fees, Respondent maintained that Claimants agreed to pay the annual custodial fees when they signed their new account documents in 1991.

Respondent denied that an unauthorized trade was made in Claimants' account and maintained that a clerical error was made on April 19, 1995, whereby \$2000.00 was inadvertently deposited into Claimants' account. Respondent further maintained that, after Claimants repeatedly refused to return the money, it liquidated a portion of the account to recover the money.

RELIEF REQUESTED

Claimants requested damages of \$10,000.00.

Respondent requested that its Motion to Dismiss be granted and that Claimants' Statement of Claim be dismissed in its entirety.

AWARD

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

1. Respondent be and hereby is liable and shall pay to Claimants the sum of \$1,200.00.
2. All other claims are denied.

FORUM FEES

Pursuant to Rule 10322(c) of the Code of Arbitration Procedure, the arbitrator has assessed the following forum fees:

1 hearing session x \$200.00 = \$200.00

Respondent be and hereby is liable and shall pay the sum of \$200.00, representing the total

amount of forum fees assessed.

Fees are payable to the NASD Regulation, Inc.

Arbitrator's Signature



Irwin Kahn, Esq.
Public Arbitrator

Date of Decision: December 17, 1997

I, Irwin Kahn, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Irwin Kahn, Esq.