

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Gloria and Howard Schwartz
Gloria Schwartz
Gloria Schwartz IRA

98-00372

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Steve Texeira
Jeff Spotts

REPRESENTATION

For Gloria and Howard Schwartz ("Claimants") appeared Richard C. Hochman, Esq., a sole practitioner, located in Jamaica Estates, New York.

For Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill") appeared Robert E. Goldberg, Esq., of Merrill Lynch Pierce Fenner & Smith Inc., located in New York, New York.

For Steve Texeira ("Texeira") appeared Robert E. Goldberg, Esq., of Merrill Lynch Pierce Fenner & Smith Inc., located in New York, New York.

For Jeff Spotts ("Spotts") appeared Robert E. Goldberg, Esq., of Merrill Lynch Pierce Fenner & Smith Inc., located in New York, New York.

CASE INFORMATION

Claimants filed a Statement of Claim on January 28, 1998.

Claimants signed the Uniform Submission Agreement on February 18, 1998.

Merrill, Texeira, and Spotts filed a joint Statement of Answer on April 14, 1998.

Merrill signed the Uniform Submission Agreement on April 14, 1998.

Texeira signed the Uniform Submission Agreement on April 9, 1998.

Spotts signed the Uniform Submission Agreement on April 9, 1998.

Merrill, Texeira, and Spotts herein after are collectively referred to as Respondents.

HEARING INFORMATION

Pre-Hearing Conference:	October 16, 1998	One Session
Hearing Sessions:	February 4, 1999	Two Sessions
	February 5, 1999	Two Sessions
	February 25, 1999	Two Sessions

Hearing Location: NASD Regulation, Inc., New York, New York

CASE SUMMARY

Claimants alleged that they suffered significant losses as a result of Respondents actions. Specifically, Claimants alleged that they were defrauded and deceived by Texeira and Spotts. In addition, Claimants alleged that Merrill failed to supervise its representatives. It is alleged that Mrs. Schwartz opened accounts at Merrill to recoup prior unrealized losses in her accounts maintained at Muriel Siebert and Co. Claimants allegedly opened three accounts at Merrill: an individual account held by Mrs. Schwartz, Mrs. Schwartz's IRA account, and a joint account to be owned by Claimants.

On May 19, 1997, Claimants allegedly met with Texeira to discuss the investment strategy for the joint account and evaluate Mrs. Schwartz current holdings. At this meeting, Texeira allegedly recommended Spotts to handle Mrs. Schwartz's individual and IRA accounts. Claimants alleged that upon evaluation of Mrs. Schwartz's holdings Texeira and Spotts advised her to liquidate virtually all of the stocks in her previous accounts, which resulted in a loss of approximately \$190,000.00. Claimants alleged that Texeira and Spotts refused to manage Mrs. Schwartz's accounts unless she followed their advice without question. In addition, Mrs. Schwartz alleged that despite her insistence to Texeira that she did not want to invest in technology industry securities, Spotts "hounded" her into purchasing technology stock. Finally, Claimants alleged that Respondents never implemented the strategy outlined for the joint account; instead, the funds marked for investment in the joint account were held in a cash account for an extended period of time.

Respondents denied all allegations of wrongdoing set forth in the Statement of Claim. Respondents maintained that Claimants were sophisticated investors who at all times controlled and directed the account activity. Texeira and Spotts denied coercing Mrs. Schwartz into liquidating her holdings. Further, Respondents alleged that Claimants never expressed an aversion to investing in a particular industry.

Respondents asserted the following affirmative defenses: 1) Claimants failed to state a claim upon which relief may be granted; 2) claims alleged against Respondents are barred by the applicable statutes of limitation; 3) Claimants are barred from maintaining this proceeding on the ground of laches; 4) all losses allegedly suffered by Claimants were proximately caused by their own conduct or negligence and the conduct or negligence of their authorized agents and advisors; 5) Claimants failed to mitigate their alleged damages; 6) any alleged damages incurred by Claimants were attributable to market conditions and not to any acts or omissions of Respondents; 7) Claimants or their authorized agents expressly ordered, approved, authorized, participated and ratified the acts and transactions complained of, and Claimants are accordingly

estopped from recovery herein; 8) at all relevant times, Merrill maintained an adequate and reasonable system of supervision and control over its employees and at all times acted in good faith and did not at any time, directly or indirectly induce any act or acts constituting a cause of action.

Respondents also filed a counter-claim against the Claimants for an abuse of process.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages representing the loss realized upon the liquidation of holdings in the amount of \$190,000.00.
2. Compensatory damages representing the loss of gain on securities sold in the amount of \$80,000.00.
3. Punitive damages in the amount of \$100,000.00.
4. Attorneys fees and costs incurred in bringing this action.

Respondents requested:

1. The Statement of Claim be dismissed in its entirety.
2. The registration records of Texeira and Spotts be entirely expunged of this arbitration and Claimants' prior letter of complaint concerning the matters in dispute.
3. Attorneys fees.
4. Arbitration costs and expenses.
5. All-expenses incurred in connection with the defense of this action and lost income from time spent diverted from their livelihood in preparation and defense of this case.

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 original remains on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions if any, 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 dismissed in its entirety.
2. Expunge Teixeira's name and any reference to him that is contained in Case Number 98-00372 from the CRD.
3. Expunge Spotts' name and any reference to him that is contained in Case Number 98-00372 from the CRD.

OTHER COSTS

Pursuant to Rule 10333 of the Code Merrill was assessed a member surcharge in the amount of \$1,500.00, which has been paid.

Pursuant to Rule 10333 of the Code Respondents were assessed a counterclaim filing fee in amount of \$500.00, which has not been paid.

FORUM FEES

Pursuant to Rule 10332(a) of the Code of Arbitration Procedure ("Code") the NASD will retain the \$200.00 filing fee deposited by the Claimant. Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed against the Claimants:

1 Pre-Hearing Conference	x	\$750.00	\$ 750.00
6 Hearing Sessions	x	\$750.00	\$4500.00
Total Forum Fees			<u>\$5250.00</u>
Minus Claimants' Hearing Session Deposit			(\$ 750.00)
Outstanding Balance			\$4500.00

The Claimant has been assessed \$5250.00 representing the total amount of forum fees. Claimant previously deposited \$750.00 with NASD Regulation, Inc. Therefore, Claimant owes NASD Regulation, Inc., \$4500.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

ARBITRATION PANEL

James P. O'Neill, Esq. - Public Chairperson
Stephen P. Hoffman, Esq. - Public Panelist
Daniel E. Miller, Esq. - Industry Panelist

ARBITRATOR'S SIGNATURE

I, James P. O'Neill, 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.


James P. O'Neill, Esq.
Public Chairperson

Date Signed

Date decision served by NASD Regulation, Inc.

4/6/99

ARBITRATION PANEL

James P. O'Neill, Esq. - Public Chairperson
Stephen P. Hoffman, Esq. - Public Panelist
Daniel E. Miller, Esq. - Industry Panelist

ARBITRATOR'S SIGNATURE

I, Stephen P. Hoffman, 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.


Stephen P. Hoffman, Esq.
Public Panelist

4/2/99
Date Signed

Date decision served by NASD Regulation, Inc. _____

ARBITRATION PANEL

James P. O'Neill, Esq. - Public Chairperson
Stephen P. Hoffman, Esq. - Public Panelist
Daniel E. Miller, Esq. - Industry Panelist

ARBITRATOR'S SIGNATURE

I, Daniel E. Miller, 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.



Daniel E. Miller, Esq.
Industry Panelist

Date Signed

Date decision served by NASD Regulation, Inc. _____