

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Harvey T. Biddle, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Roger W. Waldenstrom, Respondents

Case Number: 00-05587

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Howard M. Hoffman, Esq.
Sacramento, California

For Respondents:

Ben Suter, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed on or about: December 15, 2000

Claimant's Uniform Submission Agreement signed: December 4, 2000

Joint Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Roger W. Waldenstrom, on or about: February 12, 2001

Respondent Merrill Lynch's Uniform Submission Agreement signed: February 12, 2001

Respondent Waldenstrom's Uniform Submission Agreement signed: January 22, 2001

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various securities: 1) Intentional Breach of Fiduciary Duty (Suitability); 2) Negligent Breach of Fiduciary Duty (Suitability); 3) Churning; 4) Churning (Negligent); and 5) Failure to Supervise.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages sufficient to make Claimant whole, including out of pocket loss, and pre-judgment interest or lost opportunity costs;
2. Disgorgement of Respondents' unjust enrichment of excess commissions generated as a result of the churning;
3. Exemplary and punitive damages in a sum according to proof;
4. Reasonable attorney's fees;
5. Costs; and
6. Such other and further relief as the Panel may deem just and proper.

Respondents requested that the Panel deny Claimant's Claim in its entirety and assess the costs of these proceedings against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel compliments counsel on their professional presentations.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

1. All claims by Claimant, including the claims for punitive and exemplary damages, are dismissed. The Panel was concerned about the Respondent's role in recommending certain stocks that resulted in excessive concentration for short periods of time. However, the Panel also observed that Claimant purchased similar investments elsewhere. Claimant, while not the most sophisticated investor, had sufficient knowledge about the nature of the investments recommended by Respondent to have assumed at least equal responsibility with regard to suitability.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Roger W. Waldenstrom's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Waldenstrom must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. Each party shall bear its own costs, including attorney's fees.
4. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$1,200.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$2,000.00
Total Member Fees	= \$3,800.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(4) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$4,000.00

Pre-hearing conferences:	July 17, 2001	1 session
	August 10, 2001	1 session
	January 10, 2002	1 session
	January 14, 2002	1 session

(20) Hearing sessions @ \$1,000.00/session = \$20,000.00

Hearings:	April 22, 2002	2 sessions
	April 23, 2002	2 sessions
	April 24, 2002	2 sessions
	April 25, 2002	3 sessions
	April 26, 2002	2 sessions
	June 25, 2002	2 sessions
	June 26, 2002	2 sessions
	June 27, 2002	2 sessions

June 28, 2002	1 session
August 17, 2002	2 sessions

Total Forum Fees	= \$24,000.00
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The Panel assessed the \$24,000.00 in forum fees to Respondent, Merrill Lynch.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Administrative Costs	= \$ 0.00
Total Fees	= \$ 250.00
Less Payments	= \$ (1,250.00)
Refund to Claimant	= \$ (1,000.00)

2. Respondent, Merrill Lynch, is charged with the following fees and costs:

Member Fees	= \$ 3,800.00
Forum Fees	= \$24,000.00
Administrative Costs	= \$ 0.00
Total Fees	= \$27,800.00
Less Payments	= \$ (3,800.00)
Balance Due NASD-DR	= \$24,000.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

D'Anne J. Quinton	-	Public Arbitrator, Presiding Chair
Robert M. Lubin, Esq.	-	Public Arbitrator
Gary S. DeWeese	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

D'Anne J. Quinton
Chair, Public Arbitrator

Signature Date

Robert M. Lubin, Esq.
Public Arbitrator

Signature Date

Gary S. DeWeese
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

D'Anne J. Quinton	-	Public Arbitrator, Presiding Chair
Robert M. Lubin, Esq.	-	Public Arbitrator
Gary S. DeWeese	-	Non-Public Arbitrator

Concerning Arbitrators' Signatures

D'Anne J. Quinton
Chair, Public Arbitrator

Signature Date

Robert M. Lubin, Esq.
Public Arbitrator

Signature Date


Gary S. DeWeese
Non-Public Arbitrator

9-11-2002
Signature Date

9-12-02
Date of Service

ARBITRATION PANEL

D'Anne J. Quinton	-	Public Arbitrator, Presiding Chair
Robert M. Lubin, Esq.	-	Public Arbitrator
Gary S. DeWeese	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

D'Anne Quinton
D'Anne J. Quinton
Chair, Public Arbitrator

September 10, 2002
Signature Date

Robert M. Lubin, Esq.
Public Arbitrator

Signature Date

Gary S. DeWeese
Non-Public Arbitrator

Signature Date

9-12-02
Date of Service


ARBITRATION PANEL

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Gary S. DeWeese	-	Non-Public Arbitrator

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D'Anne J. Quinton
Chair, Public Arbitrator

Signature Date



Robert M. Lubin, Esq.
Public Arbitrator

9/12/02

Signature Date

Gary S. DeWeese
Non-Public Arbitrator

Signature Date

9-12-02

Date of Service