

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 00-05761

Ruth K. Hagy

Name of the Respondents

Hearing Site: Philadelphia, Pennsylvania

Merrill Lynch Pierce Fenner & Smith Inc.,
and Frederick John Hoey

REPRESENTATION OF PARTIES

Claimant Ruth K. Hagy, hereinafter collectively referred to as "Claimant", was represented by Douglas R. Lally, Esq., Attorney at Law, Jenkintown, Pennsylvania.

Respondents Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch") and Frederick John Hoey ("Hoey"), hereinafter collectively referred to as "Respondents", were represented by Joseph P. Dever, Jr., Esq., Morgan, Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on December 28, 2000.

Amended Statement of Claim filed on February 22, 2002.

Claimant signed the Uniform Submission Agreement on November 8, 2000.

Statement of Answer and Motion for a More Definite Statement of Claim filed by Respondents on March 15, 2001.

Answer of Respondents to Claimant's Amended Statement of Claim filed on March 22, 2002.

Respondent Hoey did not file a Uniform Submission Agreement with NASD Dispute Resolution.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on March 15, 2001.

CASE SUMMARY

Claimant asserted the following causes of action, among others: suitability; breach of fiduciary duty; negligence; fraud; and, misrepresentation. The causes of action relate to the purchase and sale of the following securities: Elder Trust, Freeport, McMoRan, Hecla Mining, K-Mart, USX Corp., and WHX corp.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; estoppel;

waiver; ratification; Respondents acted in good faith; assumption of risk; Statute of Limitations; all transactions were done in accordance with all applicable Exchange rules and regulations; laches; and, Claimant's claims are ineligible for arbitration.

RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 100,000.00
Punitive Damages	unspecified
Interest	unspecified
Other Costs	unspecified

Respondents in their Statement of Answer requested the Claim be denied in all respects; that Respondents be awarded such other and further relief as is deemed just and proper; and, that Respondent Hoey's CRD records be expunged.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Hoey did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code, and having answered the claim, is bound by the determination of the Panel on all issues submitted.

At the hearing, Respondents made a Motion to Dismiss. Said motion was denied.

AWARD

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

1. All claims against Respondents are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Hoey's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Hoey must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 225.00

Member Fees

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

Member surcharge = \$ 1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 1,500.00

Total Member Fees = \$ 3,100.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$ 750.00 = \$ 750.00

Pre-hearing conference: February 7, 2002 1 session

Two (2) Hearing sessions @ \$ 1,500.00 = \$ 1,500.00

Hearing Date: November 7, 2002 2 sessions

Total Forum Fees = \$ 2,250.00

1. The Panel has assessed \$1,350.00 of the forum fees to Claimant.

2. The Panel has assessed \$ 900.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed the following fees:

Initial Filing Fee = \$ 225.00

Forum Fees = \$ 1,350.00

Total Fees = \$ 1,575.00

Less payments = \$ 975.00

Balance Due NASD Dispute Resolution = \$ 600.00

2. Respondent Merrill Lynch is assessed the following fees:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed the following fees:

Forum Type	= \$ 900.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATION PANEL

Albert Mancini, Jr.	-	Public Arbitrator, Presiding Chairperson
John Lovering Trucsott, Esq.	-	Public Arbitrator, Panelist
Richard Frank Colello	-	Non-Public Arbitrator, Panelist

NASD Dispute Resolution

Arbitration No. 00-05761

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Concurring Arbitrators' Signatures

Albert Mancini Jr.

Albert Mancini, Jr.

Public Arbitrator, Presiding Chairperson

15 DECEMBER 2002

Signature Date

John Lovering Trucsott, Esq.
Public Arbitrator, Panelist

Signature Date

Richard Frank Colello
Non-Public Arbitrator, Panelist

Signature Date

December 17, 2002
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Albert Mancini, Jr.

Public Arbitrator, Presiding Chairperson

Signature Date

John Lovering Truscott

John Lovering Truscott, Esq.
Public Arbitrator, Panelist

Dec. 17, 2002

Signature Date

Richard Frank Colello

Non-Public Arbitrator, Panelist

Signature Date

December 17, 2002

Date of Service (For NASD Dispute Resolution office use only)

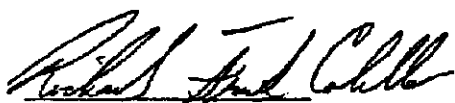
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Albert Mancini, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

John Lovering Trucott, Esq.
Public Arbitrator, Panelist

Signature Date


Richard Frank Colello
Non-Public Arbitrator, Panelist

12/13/02
Signature Date

December 17, 2002
Date of Service (For NASD Dispute Resolution office use only)