

PACIFIC EXCHANGE, INC.

In the Matter of the
Arbitration Between

[REDACTED],

Claimant,

-against-

MERRILL LYNCH PIERCE FENNER &
SMITH, INC.; AND THOMAS SUSAN,

Respondents.

Matter No. 01-L016

DECISION

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MAR 25 2002

PCX ARBITRATION

The undersigned Arbitrators, having read and considered the claim submitted by claimant [REDACTED] ("Claimant"), the answer of respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Thomas Susan ("Susan") (collectively, "Respondents"), and having heard all of the evidence submitted by the parties with regard to the matters in issue, hereby render their Decision pursuant to Rule 12 of Rules of the Board of Governors of the Pacific Exchange, Inc. A hearing was held in this matter on March 4, 2002. Claimant appeared on her own behalf. Respondents were represented by Richard Kelly.

Summary of Facts

In March 2000, Claimant spoke with Respondent Susan at the Valencia, California office of Respondent Merrill Lynch

about moving IRA accounts then held by other firms to Merrill Lynch. Claimant wished to move her invested funds out of mutual funds, common stocks, and limited partnerships into money market funds. Claimant was anxious to have her funds reinvested because of the volatility of the stock market. Claimant contends that she was told by Respondent Susan that her existing investments could be moved to Respondent Merrill Lynch within "a week" of liquidation instructions being sent to the other firms.

Respondent Susan contends that he gave Claimant the option of having the liquidation instructions go through Merrill Lynch or having Claimant directly instruct the other firms to liquidate her investments and send her the cash proceeds. Respondent Susan also contends that he told Claimant that, where Merrill Lynch initiates the liquidation pursuant to authorization from the client, it takes an average of 7 to 10 business days for the funds to be received by Merrill Lynch.

Claimant's existing investments were with two different firms, Resources Trust and First Trust. On or about March 14, 2000, Claimant directed Respondents to initiate the liquidation and signed Liquidation Authorization letters to Resources Trust and First Trust. The Resources Trust funds were not received by Merrill Lynch until April 11, 2000. The

First Trust funds were not received by Merrill Lynch until May 17, 2000.

Between March 14, 2000 and the time that the funds were received by Merrill Lynch, the value of the mutual funds at first increased and then declined. Even with the decline, there were net gains in both funds between March 14 and the actual date of receipt. However, had the funds been transferred within one week of March 14, Claimant would have realized a larger gain because the funds would have been received by Merrill Lynch and placed in money market funds before they subsequently declined.

In establishing the relationship with Claimant, Respondents opened two separate IRA asset management accounts in Claimant's name. Each of these asset management accounts was subject to minimum quarterly management fees of \$175.

Dissatisfied with the handling of her investments by Merrill Lynch, Claimant closed her Merrill Lynch accounts in July 2000. In addition to the quarterly management fees that had previously been charged on both accounts, Merrill Lynch also charged both accounts with a \$50 termination fee.

Issues Presented

This matter presented the following issues to be resolved by the Arbitration Panel:

1. Whether Respondents acted with due diligence in arranging for the liquidation of Claimant's Resources Trust

and First Trust investments;

2. Whether Respondents acted reasonably in creating two IRA asset management accounts to hold Claimant's funds.

Relief Requested

Claimant seeks to recover lost profits of \$13,897.27, which Claimant contends would have been the additional value of her accounts had Merrill Lynch arranged for the liquidation of the Resources Trust and First Trust investments within one week. Claimant also seeks punitive damages. Finally, Claimant contends that Merrill Lynch did not act reasonably in creating two separate asset management accounts, when her financial needs would have been completely met by a single money market account bearing a \$40 annual charge.

Findings and Decision

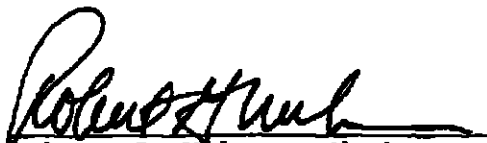
After considering the arguments and evidence of both Claimant and Respondents in this matter, the undersigned Arbitrators make the following findings:

1. Respondents did not act unreasonably in the manner in which they caused the Resources Trust and First Trust investments to be liquidated and transferred to Respondent Merrill Lynch. Respondent Susan provided Claimant with an estimate of the time it would take for Merrill Lynch

to receive the funds, but this was not a representation that any specific deadline would be met.

2. Respondents acted unreasonably in creating two separate asset management accounts for Claimant because Claimant's financial needs, as expressed to Respondent Susan, would have been met with a single money market account. As a consequence, Claimant was needlessly charged minimum quarterly fees, as well as duplicative termination fees. Respondent should have paid only a \$40 annual fee and a single termination fee.

3. The undersigned Arbitrators award Claimant the total amount of \$1,375. The parties shall bear their own costs of arbitration and the total forum fees of \$1,150 shall be split equally between the parties. The Arbitrators find no basis for any referral to any regulatory organization for disciplinary investigation of rule violations or violation of Federal Securities Laws.


Robert G. Wilson, Chairman

Barbara Vosen, Arbitrator

John DeRosa, Arbitrator

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to receive the funds, but this was not a representation that any specific deadline would be met.

2. Respondents acted unreasonably in creating two separate asset management accounts for Claimant because Claimant's financial needs, as expressed to Respondent Susan, would have been met with a single money market account. As a consequence, Claimant was needlessly charged minimum quarterly fees, as well as expeditious termination fees. Respondent should have paid only a \$40 annual fee and a single termination fee.

3. The undersigned Arbitrators award Claimant the total amount of \$12,150. The parties shall bear their own costs of arbitration and the total forum fees of \$2,150 shall be split equally between the parties. The Arbitrators find no basis for any referral to any regulatory organization for disciplinary investigation of rule violations or violation of Federal Securities Laws.


Robert G. Wilson, Chairman



Barbara Vosen, Arbitrator


John DeRosa, Arbitrator

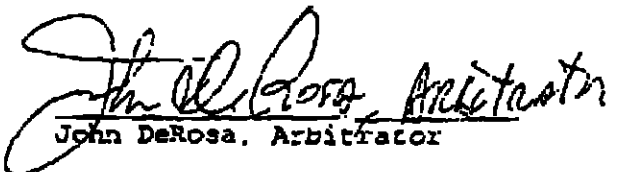
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2. Respondents acted unreasonably in creating two separate asset management accounts for Claimant because Claimant's financial needs, as expressed to Respondent Susan, would have been met with a single money market account. As a consequence, Claimant was needlessly charged minimum quarterly fees, as well as duplicative termination fees. Respondent should have paid only a \$40 annual fee and a single termination fee.

3. The undersigned Arbitrators award Claimant the total amount of \$1,375. The parties shall bear their own costs of arbitration and the total forum fees of \$1,350 shall be split equally between the parties. The Arbitrators find no basis for any referral to any regulatory organization for disciplinary investigation of rule violations or violation of Federal Securities Laws.


Robert G. Wilson, Chairman

Barbara Vosen, Arbitrator


John DeRosa, Arbitrator