

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants:

James Berse and Jane Berse

and

Case Number: 02-05833

Hearing Site: Milwaukee, Wisconsin

Name of the Respondents:

John Riley, Louis Henneck,
The Riley-Henneck Group and
Merrill Lynch, Pierce, Fenner
& Smith Incorporated.

Nature of the Dispute: Customers v. Member Firm and Associated Persons.

REPRESENTATION OF PARTIES

James Berse and Jane Berse ("Claimants") were represented by Emmanuel Mamalakis of Mamalakis Law Office, Milwaukee, Wisconsin.

Respondents John Riley, ("Riley") Louis Henneck, ("Henneck") The Riley-Henneck Group, ("The Group") and Merrill Lynch, Pierce, Fenner & Smith Incorporated, ("Merrill Lynch") ("Respondents") were represented by Jeffrey J. Liotta of Whyte Hirschboeck, Dudeck, S.C., Menomonee Falls, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: September 24, 2002.

Claimants signed the Uniform Submission Agreements on September 24, 2002.

Respondents filed a Joint Statement of Answer on November 25, 2002.

Respondents signed the Uniform Submission Agreements on November 18, 2002.

CASE SUMMARY

Claimants opened accounts with Merrill Lynch in 1983. The central allegation of Claimants' claim is that Respondents solicited a portfolio of unsuitable securities at the peak of the stock market in March of 2000. Claimants alleged that the Respondent Riley unduly pressured them to make an investment in Merrill Lynch's Internet Strategies Fund and that Respondent Henneck should not have solicited individual equities, some of which were also in the technology sector. Claimants claim that they advised Respondents that they desired a diversified portfolio that wo

would preserve capital, generate income, and allow for immediate withdrawals because James Berse was retiring early due to health reasons.

Respondents denied all allegations of wrongdoing set forth in the Statement of Claim. Specially, Respondents alleged the following: misrepresentations of facts were made when any of the securities were purchased in March of 2000, nor were Claimants pressured to purchase Internet Strategies Fund shares; the Claimants never told Respondents that James Berse was going to retire; the Claimants communicated that they desired an aggressive growth portfolio of stocks with higher returns than what their previous portfolio at Merrill Lynch was achieving; at the time of the purchases, both Claimants were self-employed in businesses involving sales, they had no dependents, they owned their own home with minimal mortgage debt and they had investment assets outside of Merrill Lynch; and all the securities purchased were suitable based on Claimants stated investment objectives, risk tolerances, income and financial net worth.

RELIEF REQUESTED

Claimants requested:

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| Compensatory Damages: | \$ 150,000.00 |
| Punitive Damages | \$ 300,000.00 |
| Interest | \$ 50,000.00 |

Respondents requested that the claims against them be dismissed in their entirety and the expungement of any notation of the Statement of Claim from Respondent Riley's and Henneck's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

After the pleadings were exchanged and extensive discovery conducted, and after the Panel ordered Claimants to identify with specificity what Claimants claimed were the alleged misrepresentations made by Respondents, Claimants acknowledge and the parties stipulate to the truth of the facts as follows:

1. Respondent Riley did not make any misrepresentations of fact when Riley solicited the Claimants to invest in Merrill Lynch's Internet Strategies Fund. In fact, Riley's statement that Henneck would want the Claimants to buy was true, since Merrill Lynch Internet Strategies was specifically listed on a written investment proposal made by Henneck to Claimants in March of 2000. The other statements attributed to Riley were not actionable as a matter of law since the alleged statements related to the occurrence of future events or would be deemed under applicable law as "sales puffery," and are not actionable.
2. Respondent Henneck did not make any representations of fact when Henneck solicited the Claimants to purchase securities in March of 2000. Henneck's recommendations were consistent with Henneck's understanding of the Claimants investment objectives of long-term capital appreciation, rather than generations of current income. In fact, discovery disclosed that Claimants maintained a growth oriented investment strategy even after they left Merrill Lynch and transferred their accounts to Associated Wealth Management.

3. Claimants agree that their claims against Respondents are without factual or legal merit and fail to state a claim upon which relief can be granted against them or their partnership, The Riley- Henneck Group, and the Claimants have dismissed their claims against Respondents Riley, Henneck and the Riley -Henneck Group with prejudice. Claimants have also agreed to dismiss their claims against Merrill Lynch, and Merrill Lynch denies any liability for such claims, under the terms of a Settlement Agreement and Release.

The Parties entered into an agreement to present this Stipulated Award to the Panel in lieu of a hearing and upon the facts and the motions of the parties for an entry of an Award, the Panel hereby grants the motion and enters the following relief:

1. All of Claimants James Berse's and Jane Berse's claims against Respondents John Riley, Louis Henneck, The Riley-Henneck Group and Merrill Lynch, Pierce, Fenner & Smith Incorporated are dismissed in their entirety with prejudice;
2. The Panel recommends the expungement of all references to the above-captioned matter from Respondents John Reily and Louis J. Henneck'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, Respondents Reily and Henneck must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive;
3. Any and all relief not specifically addressed herein is denied; and,
4. Any and all costs not specially enumerated herein shall be borne by the party who incurred them.

Pursuant to the Code, the following fees are assessed:

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$300.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch as the Respondent firm, is charged:

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| Member surcharge | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$ 2,750.00 |

Forum Fees and Assessments

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

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| Four pre-hearing sessions with Panel x \$1,125.00 | = \$4,500.00 |
| Pre-hearing conferences: April 7, 2003 1 session | |
| June 16, 2003 1 session | |
| October 15, 2003 2 sessions | |
| Total Forum Fees | = \$4,500.00 |

The Panel has assessed \$2,250.00 of the forum fees to Claimants jointly and severally.
The Panel has assessed \$2,250.00 of the forum fees to Respondents jointly and severally.

Fee Summary

Claimants are jointly and severally liable for:

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| Initial Filing Fee | = \$ 300.00 |
| Forum Fees | = \$ 2,250.00 |
| <u>Total Fees</u> | <u>= \$ 2,550.00</u> |
| <u>Less payments</u> | <u>= \$ 1,425.00</u> |
| Balance Due to NASD Dispute Resolution | = \$ 1,125.00 |

Respondent, Merrill Lynch is solely liable for:

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| Member Fees | = \$ 5,200.00 |
| <u>Total Fees</u> | <u>= \$ 5,200.00</u> |
| <u>Less payments</u> | <u>= \$ 5,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 00 |

Respondents, Reily, Henneck, The Reiley-Henneck Group and Merrill Lynch are jointly and severally liable for:

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| Forum Fee | = \$ 2,250.00 |
| <u>Less Payments</u> | <u>= \$ 2,250.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 00 |

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

ARBITRATION PANEL

Ewald L. Moerke- Public Arbitrator, Presiding Chairperson
Evonne A. Hurst -Public Arbitrator
Roy Clyde George -Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Ewald L. Moerke
Public Arbitrator, Presiding Chair

Signature Date

Evonne A. Hurst
Public Arbitrator

Signature Date

Roy Clyde George
Non-Public Arbitrator

Signature Date

April 8, 2004
Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

Ewald L. Moerke- Public Arbitrator, Presiding Chairperson

Evyonne A. Hurst -Public Arbitrator

Roy Clyde George -Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Ewald L. Moerke
Public Arbitrator, Presiding ChairSignature DateEvyonne A. Hurst4/07/04Evyonne A. Hurst
Public ArbitratorSignature DateRoy Clyde George
Non-Public ArbitratorSignature DateDate of Service (For NASD Dispute Resolution use only)

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Evonne A. Hurst - Public Arbitrator
Roy Clyde George - Non-Public Arbitrator**Concurring Arbitrators' Signatures:**_____
Ewald L. Moerke
Public Arbitrator, Presiding Chair_____
Signature Date_____
Evonne A. Hurst
Public Arbitrator_____
Signature Date_____
Roy Clyde George
Non-Public Arbitrator_____
Signature Date

4/5/04

Date of Service (For NASD Dispute Resolution use only)