
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Henry Mandro

Case Number: 02-06452

Name of the Respondents

Hearing Site: Louisville, Kentucky

Merrill Lynch Pierce Fenner & Smith Inc.
Keith Myers
Carol Heil

Nature of the Dispute: Customer vs. Member and Associated Persons

REPRESENTATION OF PARTIES

Claimant Henry Mandro, (Claimant) was represented by Barry D. Hunter, Esq., Frost Brown Todd LLC, Lexington, Kentucky.

Respondents Merrill Lynch Pierce Fenner & Smith Inc., Keith A. Myers and Carol Heill (Respondents) were represented by Terry R. Weiss, Esq., Sutherland, Asbill & Brennan, Atlanta, Georgia.

CASE INFORMATION

The Statement of Claim was filed on or about October 28, 2002. The Claimant's Submission Agreement was signed on or about September 19, 2002.

Respondents' Joint Statement of Answer was filed on or about February 10, 2003. The Submission Agreement of Merrill Lynch Pierce Fenner & Smith Inc. was signed on or about February 7, 2003. The Submission Agreement of Carol Heil was signed on or about February 7, 2003. The Submission Agreement of Keith Myers was signed on or about February 7, 2003.

CASE SUMMARY

Henry Mandro asserted the following causes of action: Violation of the Kentucky Securities Act; Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5; failure to supervise; breach of fiduciary duty; negligence; and breach of contract. The causes of action relate to the investment in various equities.

Claimants specifically stated the following:

Mandro met with Brokers Myers and Heil in April 2000. During this meeting Myers and Heil agreed to convert Mandro's account from a mix of 90% stocks and 10% fixed income to a mix of 60% fixed income/cash and only 40% equities. They also agreed to structure Mandro's portfolio in such fashion as to generate approximately \$50,000 of income and to provide Mandro with the opportunity for modest principal appreciation with only modest risk of any diminution of capital. After April, 2000, Mandro relied upon Myers and Heil to implement the investment plan to which they had agreed, and he had no further contact with them for several months. By November 2000, however, Mandro became concerned that his account was still highly concentrated in equities and was still earning virtually no income, and he scheduled a meeting with his new brokers. At this meeting, Myers and Heil admitted that they had unilaterally decided to disregard the investment plan to which the parties had agreed because of their optimistic view that the market growth of the late '90's would continue through 2000. Because of market declines, however, Mandro's account had actually declined by 10%, from \$950,000 to \$870,000, between April 2000 and November 2000.

Unless specifically admitted in their Answer, Merrill Lynch Pierce Fenner & Smith Inc., Keith A. Myers and Carol Heil denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim fails to state a cause of action upon which relief may be granted; The Statement of Claim is barred, in whole or in part, by the equitable doctrines of laches, unclean hands and estoppel; All activity in the accounts was suitable for and consistent with Claimant's stated and exhibited investment objectives; The loss, if any, was sustained as a result of Claimant's own negligence and/or contributory negligence; Claimant, by his actions and inaction, waived the right to pursue any claim; Claimant authorized, directed, and ratified all of the transactions in his accounts; Claimant is barred from recovery because he knowingly assumed the risks of his investments; The Statement of Claim is barred, in whole or in part, based upon Claimant's failure to mitigate damages; At all times mentioned in the Statement of Claim, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees, and Merrill Lynch at all times acted in good faith; Claimant failed to use requisite due diligence in monitoring, trading, managing and handling his own accounts; To the extent that Claimant seeks to assert claims for alleged violations of NASD and NYSE rules, no such private right of action exists; Claimant's claims, if any, are barred, in whole or in part, by the expiration of the applicable statute of limitations; Merrill Lynch is not subject to controlling person liability, and the "good faith" defense applies to negate such a claim; and Claimant is not entitled to recover attorneys' fees or punitive damages in this arbitration under applicable law.

RELIEF REQUESTED

Henry Mandro requested:

Compensatory Damages	\$300,000.00
Punitive Damages	\$unspecified
Attorneys' Fees	\$unspecified
Costs	\$unspecified

Merrill Lynch Pierce Fenner & Smith Inc., Keith Myers and Carol Heil requested:

Costs	\$unspecified
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Non-Monetary Relief if any: The panel deny the Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND 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(s) remain on file with the NASD Dispute Resolution (the "NASD").

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. The claims asserted in this matter shall be and are hereby denied.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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	= \$ 300.00
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Member Fees

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 Pierce Fenner & Smith Inc.'s firm is a party.

Member surcharge	= \$1,700.00
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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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 10, 2003 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: December 10, 2003 2 sessions	
December 11, 2003 2 sessions	

Total Forum Fees	= \$5,625.00
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The Panel has assessed \$5,625.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith Inc.

Fee Summary

Claimant, Henry Mandro, is liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund due to Claimant	= \$ 1,125.00

Merrill Lynch Pierce Fenner & Smith Inc, is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$10,825.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

Earle R. Frost, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
John P. McShane	-	Public Arbitrator
William Lewis Brown, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Earle R. Frost, Jr., Esq.
Earle R. Frost, Jr., Esq.
Public Arbitrator, Presiding Chairperson

12/18/03
Signature Date

/s/ John P. McShane
John P. McShane
Public Arbitrator

12/18/03
Signature Date

/s/ William Lewis Brown, Esq.
William Lewis Brown, Esq.
Non-Public Arbitrator

12/19/03
Signature Date

12/19/03
Date of Service (For NASD Dispute Resolution use only)

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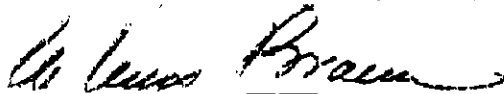
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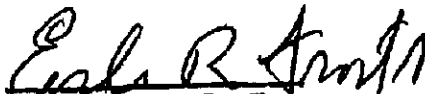
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