

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant
Melvin Schanno

v.

02-06623
Minneapolis, Minnesota

Respondent
Merrill Lynch Pierce Fenner & Smith, Inc.

Nature of Dispute: Customer v. Member

REPRESENTATION OF PARTIES

Melvin Schanno ("**Claimant**") was represented by Harvey Eckart, Esq., of Eckart & Leonetti, P.A., St. Paul, Minnesota.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Respondent**") was represented by Anna E. Shimanek, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about October 31, 2002. Submission Agreement of Claimant was signed on or about October 30, 2002.

Statement of Answer was filed by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on or about January 10, 2003. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about April 26, 2003.

Claimant filed a Motion to Strike Unsubstantiated Defense (and to compel discovery) on or about September 23, 2003. Respondent filed a Response to Claimant's Motion to Strike Unsubstantiated Defense (and to compel discovery) on or about October 14, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: suitability, negligence, violation of Minnesota Blue Sky Law, violation of Minnesota consumer fraud statutes, failure to supervise, and respondeat superior liability. The causes of action related to Claimant's allegation that Respondent made unsuitable investments and generated excessive fees in his retirement account invested with Merrill Lynch's Consults program. Claimant stated that Respondent changed his portfolio's risk tolerance

from conservative to high risk and separated his investments into multiple accounts resulting in additional commissions and fees.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Respondent acted appropriately at all times in making recommendations that allowed Claimant to choose managed portfolios in accordance with his stated objectives and risk tolerance; Claimant received monthly as well as quarterly account statements discussing the changes in the portfolio holdings and performance, and Claimant knowingly accepted the risks associated with each portfolio.

RELIEF REQUESTED

Claimant requested an award in the amount of \$169,553 in compensatory damages. In addition, Claimant requested attorney's fees, costs and any other relief that the Panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The Arbitration Panel issued an Order on November 3, 2003, denying Claimant's Motion to Strike Unsubstantiated Defense and granting in part, and denying in part, Claimant's motion to compel discovery.

As a result of the evidence presented and the testimony offered at the Arbitration Hearing, the Panel has determined the Following Findings of Fact and Conclusions of Law:

1. Respondent made full disclosure of the details of its Consults Service to Claimant, and he knowingly chose to participate in the same.
2. Consistent with the Consult Service, Claimant knew that by investing with multiple investment managers that participated in said Service, he would be obtaining desirable diversification of his investments and "exposure to more than one investment style." With this in mind, Claimant knowingly chose to have multiple investment managers.
3. Respondent used a questionnaire form that was reasonably designed and calculated to assess an investor's risk tolerance. Claimant, with the assistance of the Merrill Lynch financial associate, completed said questionnaires in connection with the opening of six Consults accounts. Said questionnaires were scored in accordance with the guidelines for the same. Said questionnaires indicated Claimant's risk tolerance for investments in the Consults Service at different points in time.
4. Consistent with the Consults Service, Claimant understood that with multiple investment managers, the "Risk Category of each manager in a multiple-manager portfolio is less critical than the Blended Risk Category

- resulting from the combination" and that the Blended Risk Category would be used to gauge the suitability of his overall Consults portfolio.
5. The Merrill Lynch financial associate presented several possible investment managers for each Consults account to Claimant, with a recommendation of one such manager, and then, after discussion, Claimant knowingly chose the investment manager for each account.
 6. The investment managers that were chosen by Claimant resulted in Blended Risk Categories for his Consults portfolio that did not exceed his risk category as determined by the Consults questionnaires. As a result, the Consults portfolio as a whole and the individual Consults accounts were suitable for Claimant.
 7. The fees that Respondent charged Claimant for the Consults Service were in accordance with the details of said service that were disclosed to Claimant.
 8. After the opening of the six Consults accounts, Respondent provided Claimant with monthly, quarterly and annual written account statements showing details of each account and of the overall Consults portfolio. Claimant reviewed these statements on a regular basis. In addition, Claimant and Merrill Lynch's financial associate had regular communications regarding the accounts and the overall financial markets. As a result, Claimant kept himself apprised of developments in the accounts.
 9. Respondent did not make any untrue statements of material fact regarding the Consults Service to Claimant nor did it fail to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
 10. Respondent was not negligent in its supervision of the financial associate who worked with Claimant.
 11. Therefore, Claimant, Melvin Schanno, failed to establish any basis for liability of Respondent, Merrill Lynch.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their entirety;
2. 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 and;

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 the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 1,700
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 2,750

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 1,125 = \$ 1,125

Pre-hearing conference: 05/09/2003 1 session

Five (5) Hearing sessions with Panel x \$ 1,125 = \$ 5,625

Hearing Dates: 11/17/2003 2 sessions
11/18/2003 2 sessions
11/19/2003 1 session

Total Forum Fees = \$ 6,750

The Arbitration Panel has assessed \$ 6,750 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Melvin Schanno is liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 1,425
<u>Balance Refunded By NASD Dispute Resolution</u>	= \$ 1,125

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

<u>Member Fees</u>	= \$ 5,200
<u>Forum Fees</u>	= \$ 6,750
<u>Total Fees</u>	= \$ 11,950
<u>Less payments</u>	= \$ 5,200
<u>Balance Due NASD Dispute Resolution</u>	= \$ 6,750

All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Duane W. Krohnke, Esq. - Public Arbitrator, Presiding Chair
Cassandra Kimberly Ward-Brown, Esq. - Public Arbitrator
Donald F. James- Non-Public Arbitrator

Concurring Arbitrators:

Duane W. Krohnke, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Cassandra Kimberly Ward-Brown, Esq.
Public Arbitrator

Signature Date

Donald F. James
Non-Public Arbitrator

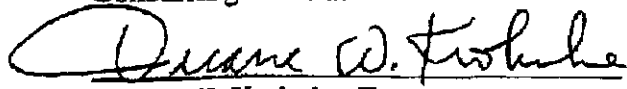
Signature Date

12/24/03
Date of Service (NASD use only)

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Cassandra Kimberly Ward-Brown, Esq. - Public Arbitrator
Donald F. James- Non-Public Arbitrator

Concurring Arbitrators:


Duane W. Krohnke, Esq.
Public Arbitrator, Presiding Chair

December 16, 2003
Signature Date

Cassandra Kimberly Ward-Brown, Esq.
Public Arbitrator

Signature Date

Donald F. James
Non-Public Arbitrator

Signature Date

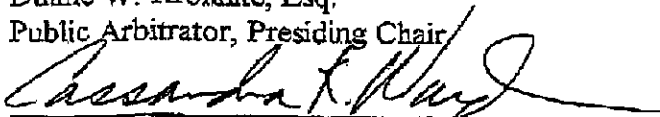
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Cassandra Kimberly Ward-Brown, Esq.
Public Arbitrator

Signature Date

Donald F. James
Non-Public Arbitrator

Signature Date

12/14/03
Date of Service (NASD use only)