

PACIFIC EXCHANGE, INC.
115 Sansome Street
San Francisco, CA 94104

The Matter Of The Arbitration Between:

Ruth Fisher (a.k.a. Ruth Lazar)

Claimant

v.

Merrill Lynch, Pierce, Fenner &
Smith, Inc. and David H. Cleary

Respondents

PCX CASE #: 02-L056

DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant and the Answer of Respondents, and having considered evidence presented at hearings on January 24 - 26, 2005, hereby render the following Decision pursuant to Rule 12 of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Michael E. Friedman, Esq.

Of Respondents: Seth L. Hanson, Esq.
Mennemeier, Glassman & Stroud LLP

SUMMARY OF FACTS

Claimant submitted her Statement of Claim, dated November 15, 2002, to the Pacific Exchange. Respondents submitted their Answer, dated January 31, 2003. The Arbitration Hearing was held on January 24 - 26, 2004 at the Omni Hotel in Los Angeles, California.

ISSUES PRESENTED

Claimant alleged unsuitability, unauthorized trading and failure to supervise. Respondents denied Claimant's allegations and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$17,339, plus interest, in unrealized trade losses in the Roth IRA and damages in the amount of \$24,900, plus interest, in unrealized trade losses in her trust account. Claimant also requested punitive damages and attorney's fees and costs. Respondents requested dismissal of the Claim with prejudice. Respondents also requested that this matter be expunged from Mr. Cleary's record, as maintained by the Central Registration Depository ("CRD").

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FINDINGS AND DECISION

During the hearing, Claimant dismissed all claims against David H. Cleary with prejudice. After considering the argument and evidence of both the Claimant and Respondents in this matter, the undersigned Arbitrators make the final determination and decision of the Issues presented, as set forth below:

A. Decision

1. Respondent Merrill Lynch shall pay to Claimant the amount of \$51,411.58, which includes interest up to the date of the Award.
2. Respondent Merrill Lynch shall pay all forum fees, as set forth below.
3. All claims for attorney's fees and punitive damages are denied.

B. Other determinations

1. Respondent shall reimburse Claimant's non-refundable filing fee: ☒ YES ☐ NO
2. Respondent shall reimburse Claimant's hearing session deposit: ☒ YES ☐ NO
3. Parties shall bear their own costs of arbitration: ☒ YES ☐ NO
4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws? ☐ YES ☒ NO

C. Forum Fees

The forum fees in the amount of \$7,350.00 are assigned wholly to Respondent Merrill Lynch.

Dated: Feb. 11, 2005

Alan Stamm
Alan Stamm, Chair

Dated: _____

Mandel Himmelstein, Public Arbitrator

Dated: _____

Larry Haugaard, Industry Arbitrator

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