

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
MARGARET DESUTTER, individually,)
and)
MARGARET DESUTTER, Trustee U/A)
Dated March 27, 1989 By Guida E. Desutter)
)
Claimants,)
)
and) No. 03-00008
)
MERRILL LYNCH, PIERCE, FENNER)
& SMITH, INC.,)
)
and)
)
PHILIP WAYNE TAXMAN,)
)
Respondents.)

STIPULATED AWARD

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

REPRESENTATION OF PARTIES

For Guida DeSutter Trust dated March 27, 1989 ("Trust") and Margaret DeSutter, as an individual and trustee of the Trust (hereinafter collectively referred to as "Claimants"), Albert Watkins, Watkins, Kodner, Muchnick, Dunner & Weigley, St. Louis, Missouri.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Philip Wayne Taxman ("Taxman") (hereinafter collectively referred to as "Respondents"), Edwin Noel and Jeffrey Kass, Armstrong Teasdale, LLP, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: December 31, 2002.

Claimants signed the Uniform Submission Agreement: December 31, 2002.

Statement of Answer filed by Respondents on or about: March 31, 2003

Claimant's Response to Affirmative Defenses filed on or about: April 3, 2003

Respondent Merrill signed the Uniform Submission Agreement on April 11, 2003.

CASE SUMMARY

Claimants alleged that Respondents recommended unsuitable investments that were out of step with Claimants' goals and objectives, and that Claimants sustained substantial losses in their accounts as a direct result of Respondents' recommendations and failure to follow their own recommendations. Claimants contended that Respondents violated federal and Missouri

securities laws, NASD rules, and common law. Specifically, Claimants asserted the following causes of action: Violation of NASD Rule 2310, suitability; Unsuitability under federal securities laws; Unsuitability under state securities laws; Violation of NASD Rule 2210, communications with public; Violation of NASD Rule 2520, failure to increase maintenance margins; failure to educate clients; Fee overcharging; Breach of fiduciary duty; and violation of NASD Rule 3010, failure to supervise. The causes of action relate to 10 different accounts held by Claimants.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondents contended that the accounts at issue actually made money and that there were no losses.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$1,250,000.00, punitive damages of \$1,250,000.00, pre and post-judgment interest, costs of this action, reasonable attorneys' fees and any other relief deemed just, fair and proper.

Respondents asked the Panel to dismiss the Statement of Claim in its entirety, to assess all forum fees and costs against Claimants and to expunge all record of this proceeding from Respondent Taxman's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 15, 2004, Claimants notified NASD Dispute Resolution that this matter had been settled.

On or about April 15, 2004, Respondents submitted a proposed Stipulated Award with a request that the Panel enter the Stipulated Award expunging all references to this matter from Respondent Taxman's registration records maintained by the NASD CRD.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondent Merrill, the individual Respondent Taxman or any other person or entity.

Based upon the statement by Claimants that after discovery, Claimants determined that the individual Respondent, Taxman, who serviced Claimants' accounts, had not done anything wrong, had not committed any of the wrongful acts alleged in the Statement of Claim and were not liable to Claimants under any of the claims advanced in the Statement of Claim, and at the joint request of the parties, the Panel recommends the expungement of all references to this matter, including any references on the NASD CRD system, from the registration records of Respondent Philip Taxman with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Phil Taxman must obtain confirmation from a court of competent

jurisdiction before the NASD CRD will execute the expungement directive.

Each party shall bear their respective costs, including attorneys' fees.

All other requests for relief, which are not addressed specifically in the Stipulated Award are denied, with prejudice.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 500.00

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 a party.

Member surcharge = \$2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$5,000.00

Forum Fees and Assessments

The 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 a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: August 29, 2003 1 session

Total Forum Fees = \$ 450.00

The parties have agreed to pay forum fees as follows:

Respondent Merrill Lynch Pierce Fenner & Smith shall pay 100% of the total forum fees in the amount of \$ 450.00.

FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee = \$ 500.00
Less payments = \$1,700.00
Refund Due from NASD Dispute Resolution = \$1,200.00

Respondent Merrill is solely liable for:

Member Fees	= \$8,550.00
Forum fees	= \$ 450.00
Total Fees	= \$9,000.00
<u>Less payments</u>	<u>= \$8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

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

ARBITRATIONAL PANEL

C. J. McEnery, Jr.	-	Public Arbitrator, Presiding Chairperson
Robert G. Haddenhorst	-	Public Arbitrator
Steven C. Melichar	-	Non-Public Arbitrator

Concurring Arbitrator's Signatures

C. J. McEnery, Jr.
Public Arbitrator, Presiding Chairperson

5-17-04

Signature date

Robert G. Haddenhorst
Public Arbitrator

5-13-04

Signature date

Steven C. Melichar
Non-Public Arbitrator

5-12-04

Signature date

5-19-04

Date of Service (for NASD Dispute Resolution office use only)

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C. J. McEnery, Jr.
Public Arbitrator, Presiding Chairperson

Robert G. Haddenhorst 5/13/2004
Robert G. Haddenhorst
Public Arbitrator

Steven C. Melichar
Non-Public Arbitrator