
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Mel Pearlman
Susan Pearlman

Case Number: 03-05688

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Mel Pearlman and Susan Pearlman, hereinafter collectively referred to as "Claimants": Neal J. Blaher, Esq., Law Offices of Neal J. Blaher, Orlando, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated, hereinafter referred to as "Respondent": Neil S. Baritz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 1, 2003.

Claimants signed the Uniform Submission Agreement on: July 30, 2003.

Statement of Answer and Affirmative Defenses filed on or about: October 23, 2003.

Respondent signed the Uniform Submission Agreement on: September 22, 2003.

CASE SUMMARY

Claimants alleged the following causes of action: 1) breach of fiduciary duty; 2) breach of contract; 3) negligence; and 4) unsuitability. The causes of action relate to investments including units of Internet HOLDERS, "baskets" of 20 stocks from a specific sub-section of the Internet industry.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages of not less than \$75,000.00; 2) disgorgement of all commissions, mark-ups/mark-downs, payment for order flow and any other forms of compensation received by

Respondent, or charged to Claimants, from the transactions at issue; 3) selective rescission of all of the unprofitable, unsuitable trades in the accounts; 4) pre-judgment interest; 5) costs and fees, including those of expert witnesses; 6) reasonable attorneys' fees pursuant to Section 57.105(5), Florida Statutes, to be awarded by a court of competent jurisdiction following an express finding by the undersigned arbitrators (the "Panel") of breach of contract; 7) punitive damages; and 8) such other relief the Panel deemed just and proper.

Respondent requested: 1) dismissal of the Statement of Claim in its entirety; and 2) costs.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 1, 2005, Claimants filed their unopposed motion to adjourn the evidentiary hearing scheduled for November 3 – 5, 2005. On or about November 1, 2005, the Panel granted the motion, adjourned the evidentiary hearing, waived the adjournment fee in the amount of \$750.00, and waived the three-day cancellation fee in the amount of \$300.00.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable on the claims of unsuitability, supervision and negligence and shall pay to Claimants compensatory damages plus interest in the total amount of \$22,411.38 into Account No. 740-52304 – Mel Pearlman TTEE, Susan Pearlman TTEE U/A DTD 04/11/96 FBO William Isaac Pearlman.
2. Respondent is liable on the claims of unsuitability, supervision and negligence and shall pay to Claimants compensatory damages plus interest in the total amount of \$22,411.38 into Account No. 740-52303 – Mel Pearlman TTEE, Susan Pearlman TTEE U/A DTD 04/11/96 FBO Debra Robin Pearlman.
3. Claimants shall surrender to Respondent 100 shares of B2B Internet Hold Tr Dep (Symbol BHH), 100 shares of Internet Holdrs Dep Rcpt (Symbol HHH), and 100 shares of Internet Infrastructure Holders Tr Dep Rept (Symbol IHH) from Account No. 740-52304 – Mel Pearlman TTEE, Susan Pearlman TTEE U/A DTD 04/11/96 FBO William Isaac Pearlman.
4. Claimants shall surrender to Respondent 100 shares of B2B Internet Hold Tr Dep (Symbol BHH), 100 shares of Internet Holdrs Dep Rcpt (Symbol HHH), and 100 shares of Internet Infrastructure Holders Tr Dep Rept (Symbol IHH) from Account No. 740-52303 – Mel Pearlman TTEE, Susan Pearlman TTEE U/A DTD 04/11/96 FBO Debra Robin Pearlman.
5. Respondent is liable and shall pay to Claimants costs in the amount of \$2,501.15.
6. Respondent is not liable on the claim of breach of contract.

7. Claimants' request for attorneys' fees is deferred to a court of competent jurisdiction for final determination.
8. Claimants' request for punitive damages is denied.
9. Any and all claims or relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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 @ \$750.00 per session	= \$ 750.00
Pre-hearing conference: March 10, 2004 1 session	

Six (6) Hearing sessions @ \$750.00 per session	= \$4,500.00
Hearing Dates: May 16, 2005 2 sessions	
May 17, 2005 2 sessions	
May 18, 2005 2 sessions	

Total Forum Fees	= \$5,250.00
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The Panel has assessed the total forum fees in the amount of \$5,250.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	= \$5,250.00
<u>Total Fees</u>	= \$8,800.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$5,250.00

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

ARBITRATION PANEL

William P. Loughnane

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Public Arbitrator, Presiding Chairperson

NASD Dispute Resolution

Arbitration No. 03-05688

Award Page 5

Kim E. Bouck, JD

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Public Arbitrator

Robert S. Natiss

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

William P. Loughnane

Public Arbitrator, Presiding Chairperson

May 25, 2005

Signature Date

/s/

Kim E. Bouck, JD

Public Arbitrator

May 25, 2005

Signature Date

/s/

Robert S. Natiss

Non-Public Arbitrator

May 25, 2005

Signature Date

May 26, 2005

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

NASD Dispute Resolution
Arbitration No. 03-05688
Award Page 5

Kim E. Bouck, JD
Robert S. Natiss

Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

William P. Loughane
William P. Loughane
Public Arbitrator, Presiding Chairperson

5/25/05
Signature Date

Kim E. Bouck, JD
Public Arbitrator

Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 03-05688
Award Page 5


Kim E. Bouck, JD
Robert S. Natiss

Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

William P. Loughnane
Public Arbitrator, Presiding Chairperson

Signature Date


Kim E. Bouck, JD
Public Arbitrator

25/May/05
Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

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

Kim E. Bouck, JD
Robert S. Natiss

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Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

William P. Loughmane
Public Arbitrator, Presiding Chairperson

Signature Date

Kim E. Bouck, JD
Public Arbitrator

Signature Date

Robert S. Natiss

Robert S. Natiss
Non-Public Arbitrator

MAY 25, 2005

Signature Date

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