

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Theodore K. Helmholt,
Claimant,

Case Number: - 04-00911

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Robert S. Oldham,
Respondents.

Hearing Site: St. Louis, Missouri

NATURE OF THE DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant, Theodore K. Helmholt ("Helmholt"), hereinafter referred to as "Claimant": Stuart R. Berkowitz, Esq. of Platke and Berkowitz, St. Louis, Missouri.

Respondents, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch") and Robert S. Oldham ("Oldham"), hereinafter collectively referred to as "Respondents": Edwin Noel, Esq. and Jeffrey H. Kass, Esq. of Armstrong Teasdale, LLP, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: January 30, 2004
Claimant signed an undated Uniform Submission Agreement.

Statement of Answer jointly filed by Respondents Merrill Lynch and Oldham on or about:
May 4, 2004.

Respondent Merrill Lynch did not submit a signed Uniform Submission Agreement.
Respondent Oldham signed the Uniform Submission Agreement: June 29, 2004.

CASE SUMMARY

Claimant alleged that Respondents recommended unsuitable investments that were out of step with Claimant's goals and objectives, and that Claimant sustained losses in his account as a direct result of Respondents' recommendations.

Unless specifically admitted in its Answer, Respondents Merrill Lynch and Oldham denied the allegations made in the Statement of Claim and asserted the following defenses: failure to mitigate damages; Claimant's losses, if any, were caused by his own conduct, his own risk tolerance and timing of his investment decisions given the market decline; Claimant ratified the transactions and is estopped from asserting damages; claims are barred by the relevant statute of limitations; and Respondents conducted their business in a professional manner and acted in good faith without knowledge of or participation in any alleged improper activity. In addition, Respondents contended that Claimant specifically authorized the transactions at issue in writing.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$100,000.00, plus interest and costs.

Respondents Merrill Lynch and Oldham requested the Panel to dismiss the Statement of Claim in its entirety, and to assess all forum fees and costs against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 22, 2004, Claimant notified NASD Dispute Resolution that this matter had been settled.

Based upon the statement made by Claimant that after discovery, Claimant determined that the individual Respondent, Oldham, who serviced Claimant's accounts had not done anything wrong, had not committed any of the wrongful acts alleged in the Statement of Claim and was not liable to Claimant 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, from the registration records of Respondent Robert S. Oldham's CRD records.

On or about January 12, 2005, Respondents submitted a proposed Stipulated Award with a request that the Panel enter the Stipulated Award expunging all references to this matter from Respondent Oldham registration records maintained by the NASD CRD.

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.

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents Merrill Lynch and Oldham, or any other person or entity.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert S. Oldham's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Oldham must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3.) Except as otherwise specified herein, parties shall bear their own costs, including attorney's fees.
- 4.) Any and all relief not specifically addressed herein, including punitive damages, is denied with prejudice.

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 = \$ 225.00

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 person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

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 arbitrator(s), 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 x \$750.00 = \$ 750.00

Pre-hearing Date: August 3, 2004 1 session

Total Forum Fees = \$ 750.00

The Panel assessed forum fees as follows:

Claimant Helmholt shall pay \$250.00;

Respondent Merrill Lynch shall pay \$250.00; and

Respondent Oldham shall pay \$250.00.

Fee Summary

Claimant Hemholt is hereby solely liable for:

Initial Filing Fee = \$ 225.00

Forum Fees = \$ 250.00

Total Fees = \$ 475.00

Less payments = \$ 475.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent Merrill Lynch is hereby solely liable for:

Member Fees = \$4,600.00

Forum Fees = \$ 250.00

Total Fees = \$4,850.00

Less payments = \$4,850.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent Oldham is hereby solely liable for:

Forum Fees = \$ 250.00

Less payments = \$ 250.00

Balance Due NASD Dispute Resolution = \$ 0.00

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

Albert J. Haller, Esq.	-	Public Arbitrator, Presiding Chairperson
Frederick Michael Switzer, III	-	Public Arbitrator
David A. Fingerhut	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Albert J. Haller, Esq.
Albert J. Haller, Esq.
Public Arbitrator, Presiding Chair

5/12/05
Signature Date

/s/ Frederick Michael Switzer, III
Frederick Michael Switzer, III
Public Arbitrator

5/17/05
Signature Date

/s/ David A. Fingerhut
David A. Fingerhut
Non-Public Arbitrator

5/20/05
Signature Date

5/20/05
Date of Service (For NASD office use only)

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Concurring Arbitrators' SignaturesAlbert J. Haller, Esq.
Public Arbitrator, Presiding ChairMay 12 2005
Signature DateFrederick Michael Switzer, III
Public Arbitrator

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