

Pacific Exchange Inc.
115 Sansome St.
San Francisco, CA 94104

In the matter of the arbitration between:

MARVIN PERLOFF and ESTELLE FOSTER, Claimants
v.
MERRILL LYNCH, PIERCE, FENNER AND SMITH, INC.,
and JAMES HALLMAN, Respondents

PCX Case # 04-S005
DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimants on December, 2003 and the Answer of Respondents, hereby render the following decision pursuant to Rule 12 of the Pacific Exchange.

Representation of Parties

Of Claimants:

Jules Leo Federman
Representative for Claimants

Of Respondents:

Keesal, Young and Logan, Esqs.
Ben Suter, Esq.
Atlantis Tillman Langowski, Esq.
Counsel for Respondents

Summary of Facts

This is an action brought by Marvin Perloff and his sister, Estelle Foster, to recover monetary losses they sustained in their securities accounts held with Merrill Lynch during the period late 1999 through 2002.

Issues Presented

The issues presented to the Arbitrators for resolution focused on the responsibility of the broker and brokerage firm to clients who wished, contrary to the advise of the Respondents, to engage in active day trading on, in the case of Mr. Perloff, his home computer and, in the case of Ms. Foster, by watching ticker tape price movements on television and telephoning the local brokerage office for respondents automated telephone system.

Claimant presents the issue as to whether Respondents had the duty, in the light of all the facts and circumstances presented by Claimants, to prevent the type of securities trading

engaged in by Claimants, by refusing to execute orders placed by Claimants and/or closing Claimants' accounts at Merrill, Lynch.

There was no counterclaim.

Relief Requested

Claimant Perloff seeks reimbursement of his loss of approximately \$510,000 and Claimant Foster seeks reimbursement of her loss of approximately \$130,000.

Findings and Decision

A. Findings of Fact

After considering the arguments and evidence of both the Claimants and Respondents in this matter, the undersigned Arbitrators make the following finding:

1. Respondent, James Hallman, acted in the best interests of the Claimants by discouraging them from high risk activities and investments, by suggesting that part of their funds be invested in a range of low volatility mutual funds, and by encouraging them to use the services of a money manager/financial advisor.
2. Claimants declined to act on Respondents' suggestions that they seek and retain professional money management assistance, despite repeated supervisory communications to Claimants from Respondent, Merrill Lynch.
3. Claimant Marvin Perloff desired to do active day trading without any external advice and was motivated to transfer his securities account to Merrill Lynch because he could save money on commissions, by use of Respondents MLUA program.
4. Claimant Estelle Foster was similarly desirous of originating her own trading activity without advice of Merrill Lynch representatives or independent money management professionals.
5. Respondents' responsibility was limited to counseling Claimants against their trading practices and warning them of the risks associated with such practices, and had no duty to refuse to honor orders or to close their accounts.

B Decision:

After considering the arguments and evidence of both the Claimants and Respondents in this matter the undersigned arbitrators make the final determination and decision on the issues presented, as set forth below:

1. The statement of claim is dismissed with prejudice.
2. All references to this matter are to be expunged from Mr. James Hallman's CRD record.
3. The panel makes no award as to monetary damages or punitive damages.
4. The panel makes no award as to attorney or representative fees for either party.
5. Each party shall bear their own costs of arbitration
6. The Respondents shall not reimburse Claimants for non-refundable filing fees or hearing session deposits.
7. This matter need not be referred to any regulatory organization for disciplinary investigation of rule violations or violation of Federal securities laws.
8. Costs of the hearing venue are assessed against Respondents, Merrill Lynch, pursuant to PCX Rule 12.31(1)
9. All other forum fees, in the amount of \$10,300, shall be assessed against the Claimants: 2/3 (\$6,867) against Claimant Perloff and 1/3 (\$3,433) against Claimant Foster.

7/19/05
Date


Arthur H. Bernstein, Chair

7-27-05
Date


William C. Richardson, Industry Arbitrator

Date

Henry S. Bachrach, Public Arbitrator

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3. The panel makes no award as to monetary damages or punitive damages.
4. The panel makes no award as to attorney or representative fees for either party.
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7/19/05

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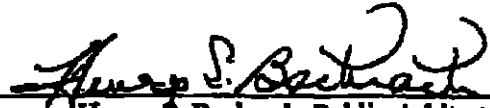
Arthur H. Bernstein, Chair

Date

William C. Richardson, Industry Arbitrator

7-27-05

Date



Henry S. Bachrach, Public Arbitrator