

N A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Helen Pelzman & The Jerry Pelzman Trust

95-01280

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Norman A. Rosner

REPRESENTATION

For Claimants, Helen Pelzman and The Jerry Pelzman Trust, appeared Helen Pelzman (pro se).

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Norman Rosner ("Rosner"), appeared Brian F. Amery, Esq. of the law firm Bressler, Amery & Ross located in Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed on: March 14, 1995

Helen Pelzman's Submission Agreement signed on: February 21, 1995

The Jerry Pelzman Trust's Submission Agreement signed on: April 19, 1995

Respondents, Merrill Lynch and Norman Rosner's, Joint Statement of Answer filed on: August 16, 1995

Respondent Merrill Lynch's Submission Agreement signed on: August 14, 1995

Respondent Norman Rosner's Submission Agreement signed on: August 28, 1995

HEARING INFORMATION

Hearing Dates/Sessions:	June 24, 1996	-	2 Sessions
	July 01, 1996	-	1 Sessions

The hearings were located at the National Association of Securities Dealers, Inc. located in New York City, New York.

CASE SUMMARY

Helene Pelzman ("Claimant") and The Jerry J. Pelzman Trust alleged that Mrs. Pelzman's financial consultant, Respondent, Norman Rosner ("Rosner"), knowingly disregarded Mrs. Pelzman's financial objectives and purposefully took advantage of the fact that she was newly widowed and was going through a traumatic period in her life. Claimant further alleged that her deceased husband handled all of their financial and investment affairs and had maintained a portfolio constituted primarily of Treasury Notes and Municipal Bonds.

Claimant asserted that upon her husband's death, she contacted Rosner and forwarded a copy of her husband's will instructing that a \$300,000.00 trust was to be formed. Claimant contended that she was not permitted access to the principal of the trust, and that the interest earned upon the principal was to go to her for her lifetime. Claimant alleged that she told Rosner that protection of principal was of the utmost importance. Claimant further alleged that Rosner never met with her to discuss her financial situation, did not have her prepare a New Account Statement, nor did he ever discuss her financial objectives.

Claimant alleged that on March 30, 1990 her husband's portfolio was valued at \$454,656.85. Claimant alleged that in order to reduce the amount to \$300,000.00, she was forced to transfer some of his investments into her portfolio and chose to transfer a \$95,000.00 Certificate of Deposit ("CD") from Continental Bank, Chicago, Illinois. Claimant alleged that Rosner should have advised her not to make such a transfer since only \$5,000 of the \$95,000 would be insured because banks are only federally insured up to \$100,000, and she already had a \$95,000.00 Certificate of Deposit from the same bank. Claimant alleged that once she learned of the insurance limit she was forced to sell the \$95,000.00 CD earning 8.850% interest and in return purchased a \$90,000.00 Treasury Note earning 8.25% interest. Claimant alleged that Rosner's error caused her to have only \$90,000.00 working for her at 8.25% interest rather than \$95,000.00 working for her at 8.85% interest.

Claimant alleged that on July 30, 1990, prior to Claimant realizing the problem with the CD, Rosner contacted her at home and told her that her retirement account was not doing well and persuaded her to liquidate the account and move it into another investment which Rosner stated would be "absolutely safe." Claimant alleged that Rosner moved her investment into the Merrill Lynch Short Term Global Fund, and purchased 6,000 shares at \$10 per share. Claimants further alleged that she had no knowledge that her new investment was a mutual fund or that funds in an IRA could be invested in mutual funds. Claimant also alleged that although Rosner told her that there was absolute protection of principal, the price per share decline to \$7.90 per share. Claimant alleged that Rosner should not have put her into such a risky investment, especially a mutual fund with no track record.

Claimant contended that in March of 1991, she met with her accountant Mr. Rubin Ageloff ("Ageloff"), in order to prepare her tax returns for 1990. Claimant alleged that Ageloff questioned her decision to get involved in such a volatile and risky investment such as the Merrill Lynch Short Term Global Fund.

Claimant also contended that during the period of April 1991 and November 1992, she educated herself on financial planning and investing. Claimant alleged that on November 16, 1992 when she felt more knowledgeable about her financial matters, decided to write a letter to Merrill Lynch's Corporate Staff to inform them about Rosner's unprofessional behavior. Claimant contended that Merrill Lynch investigated that matter and felt that her accounts were handled sufficiently and did nothing else about the matter.

Respondents, Merrill Lynch and Rosner, maintained that Claimant had three accounts while with Merrill Lynch. Respondents further maintained that in July 1990, claimant purchased \$60,000.00 of Merrill Lynch Short Term Global Income Fund Class B, a mutual fund investing in short term debt instruments of high-quality issuers around the world. Respondents also maintained that the fund was designed for

an income-oriented investor, such as Claimant, and provided a higher yield than available in a fixed priced money market with less fluctuation in net asset value than a longer term global bond fund. Respondents contended the Rosner provided Claimant with a prospectus and sales brochure prior to the purchase of the Short Term Fund, a description of her investment, and a confirmation slip. Respondents further contended neither Rosner or the prospectus stated that there was a absolute protection of principal by investing in the fund. In addition, Respondents maintained that Claimant was informed by Rosner that the investments value fluctuates with market conditions.

Respondents also contended Claimant admitted that she met with her accountant in March 1991 and discussed the Merrill Lynch Short-Term Global Fund. Respondents maintained that she knew about the investment and that it had risk, yet did not get out of the fund then, or during the period of April 1991 through November 1992. Respondents further maintained that Claimant continues to own the fund, and as of April 1995 received \$18,968.95 in dividends.

RELIEF REQUESTED

Claimant Helene Pelzman and The Jerry J. Pelzman Trust requested: (1)\$12,000.00 in compensatory damages with interest from August 1990; (2) punitive damages.

Respondents, Merrill Lynch and Norman Rosner, requested that all claims be dismissed in their entirety, with costs and expenses of defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted against Respondents, Merrill Lynch, Pierce, Fenner, & Smith, Inc. and Norman Rosner are dismissed in their entirety;
2. All parties are to bear their respective costs, including attorney's fees; and,
3. All other relief requests are denied.

FORUM FEES

Pursuant to Section 10332 of the NASD Code of Arbitration Procedure, the arbitrators have determined that the \$100.00 filing fee previously deposited by Claimant shall be retained by the NASD and have assessed the following Forum Fee:

3 Sessions X \$400.00	=	\$1,200.00
minus hearing deposit	=	<u>\$400.00</u>
Total Forum Fees Outstanding	=	\$800.00

Claimants, Helene Pelzman and The Jerry J. Pelzman Trust, are assessed the amount of \$1200.00 representing the total forum fees due, less \$400.00 previously paid, leaving \$800.00 due. Claimants, Helene Pelzman and The Jerry J. Pelzman Trust, are jointly and severally liable and shall pay the NASD the sum of \$800.00.

Fees are payable to the National Association of Securities Dealers, Inc.