

NASD REGULATION, INC. AWARD**Office of Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Warren Charkatz

Case No. 95-01624

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
James R. Ottesen

REPRESENTATION OF PARTIES

For Claimant: George Hoffman, Esq. of West Palm Beach, Florida.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and James R. Ottesen ("Ottesen"): David P. Ackerman, Esq. and Julie E. Fox, Esq. of the law firm of Ackerman, Link, Sartory, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim was filed: March 8, 1995. Claimant's Submission Agreement signed: March 8, 1995.

Statement of Answer filed: July 10, 1995. Respondents' Submission Agreements signed: on behalf of Merrill Lynch, May 8 1995 and by Ottesen, May 17, 1995.

HEARING INFORMATION

The evidentiary hearing was held on March 2, 3, and 4, 1998, in Fort Lauderdale, Florida for a total of five (5) sessions.

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CASE SUMMARY

Claimant alleged the following: Claimant was a 58 year old retired individual who, before becoming involved with the Respondents, had limited experience with investments. Mr. Charkatz opened an account with Respondent Ottesen at Merrill Lynch. Mr. Ottesen failed to explain and disclose the inherent risks when he knew or should have known that Claimant would rely on him for the information. Respondents controlled Claimant's account and caused him loss by recommending excessive and unauthorized trading that was unsuitable for Claimant. Claimant alleged breach of fiduciary duty, misrepresentation and omissions and fraud and deceit.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following: All trades in Claimant's account were authorized and Respondents did not control the trading in his account. Claimant actively participated in the trading of his account and initiated many of the transactions being complained of. Claimant had no losses and his account actually profited by over \$159,000.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$91,000.00, punitive damages in the amount of \$143,010.00, costs, filing fees and expenses of the proceeding in the amount of approximately \$3,000.00, plus a reasonable attorney's fee.

Respondents requested that the Statement of Claim be dismissed with prejudice in its entirety and further requested that the record of Respondent, James R. Ottesen, be expunged of 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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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AWARD

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

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondents are entitled to recover their reasonable attorneys' fees and costs. The amount of such attorneys' fees and costs shall be determined by a court of competent jurisdiction.
3. Any and all references to the claim against Respondent James R. Ottesen shall be expunged from Mr. Ottesen's Form U-4 and from the Central Registration Depository (CRD) record.
4. Claimant's requests for attorney's fees, punitive damages, costs, filing fees and expenses are denied.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$3,750.00 (five (5) hearing sessions x \$750.00 per session).

1. Claimant is assessed the sum of \$3,750.00, for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$3,000.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$200.00 paid by the Claimant.

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3. Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge, which was previously invoiced.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Steven Goerke, Esq.
Public Arbitrator, Presiding Chairperson

/s/

George L. Davis
Public Arbitrator

/s/

Berthold T. Berkwich
Industry Arbitrator

Date of Decision: 4-15-98