

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Estate of Kenneth T. Ralph

Case No. 99-00953

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION OF PARTIES

For Claimant: Delmer C. Gowing, III, Esq. of Delmer C. Gowing, III, P.A., Delray Beach, FL.

For Respondent: Kevin T. Duffy, Esq., Vice President and Counsel, Office of General Counsel, Merrill Lynch Private Client Group, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about March 3, 1999.

Amended Statement of Claim filed on or about August 18, 1999.

Claimant signed the Uniform Submission Agreement on February 16, 1999.

Statement of Answer filed by Respondent on or about May 7, 1999.

Amended Statement of Answer filed by Respondent on or about September 23, 1999.

Respondent signed the Uniform Submission Agreement on May 7, 1999.

CASE SUMMARY

Claimant alleged the following: Kenneth T. Ralph ("Ralph"), a long time investor with Respondent, suffered chronic and debilitating illnesses in 1997-1998. In early 1997, after being hospitalized and learning that his condition was terminal, Ralph asked that his daughter, Sharon McManus ("McManus") take over his affairs. McManus called John Parke, Ralph's registered representative at Respondent, to obtain a power of attorney. Respondent sent a power of attorney which was executed. Subsequent thereto, Respondent failed to acknowledge the power of attorney, failed to evaluate and update the risky portfolio of Ralph, and failed to discuss the situation with McManus. Respondent increased the account's risk by margining the account. Respondent's negligence in failing to update a risky portfolio when the circumstances changed constituted a violation of Chapter 517 of the Florida Statutes and damaged Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and alleged the following: The drop in value of Claimant's account was caused by the precipitous decline of one stock. Respondent does not have a duty to inform any of its customers of the market performance of a particular investment because in its role as a broker-dealer, it does not have a fiduciary obligation to its customers. Respondent properly provided information to Ralph and McManus when they asked about the account's assets and performance. Respondent is not liable for any damage resulting from Ralph's decision to use margin.

RELIEF REQUESTED

Claimant requested compensatory damages of \$89,000.00, market adjusted damages, punitive damages, interest, costs, and attorneys' fees.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

During the final hearing, Respondent made an ore tenus motion to dismiss the Statement of Claim. Claimant opposed the motion. At the conclusion of argument by counsel, the Panel denied the motion.

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 pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to the Claimant compensatory damages in the sum of \$26,000.00, pre-judgment interest specifically excluded. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the NASD Code of Arbitration Procedure.

Claimant's requests for market adjusted damages, punitive damages, costs, and attorneys' fees are denied.

Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$ 150.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, Merrill Lynch, is a party.

Member surcharge = \$1000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$1500.00

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$500.00 = \$ 500.00
Pre-hearing conference: August 31, 1999 1 session

Three (3) Hearing sessions x \$500.00 = \$1500.00
Hearing Date: March 7, 2000 3 sessions

Total Forum Fees = \$2000.00

The Panel has assessed \$1000.00 of the forum fees to Claimant.
The Panel has assessed \$1000.00 of the forum fees to Respondent.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 150.00
Forum Fees = \$1000.00
Total Fees = \$1150.00
Less payments = \$ 650.00
Balance Due NASD Regulation, Inc. = \$ 500.00

Respondent be and hereby is solely liable for:

Member Fees = \$3100.00
Forum Fees = \$1000.00
Total Fees = \$4100.00
Less payments = \$4100.00
Balance Due NASD Regulation, Inc. = \$ 0.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Leonard H. Wolf, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/

Stuart K. Furman
Public Arbitrator

Signature Date


/s/

Irving I. Hanzman
Industry Arbitrator

Signature Date

April 10, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures


Leonard H. Wolf, Esq.
Public Arbitrator, Presiding Chair

March 31, 2000
Signature Date

Stuart K. Furman
Public Arbitrator

Signature Date

Irving I. Hanzman
Industry Arbitrator

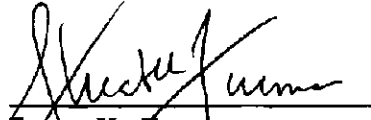
Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Leonard H. Wolf, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Stuart K. Furman
Public Arbitrator

4/4/00

Signature Date

Irving I. Hanzman
Industry Arbitrator

Signature Date

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