

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Ken Paul

and

99-01319
Denver, Colorado

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Jack Becker

REPRESENTATION OF PARTIES

Ken Paul ("**Claimant**") appeared pro se.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Respondent MLPF & S**") and Jack Becker ("**Respondent Becker**") were represented by William J. Manning, Jr., Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about March 18, 1999. Submission Agreement of Claimant Ken Paul was signed on March 17, 1999.

Statement of Answer was filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jack Becker on or about June 7, 1999. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on May 25, 1999 by Arthur H. Sobel.

CASE SUMMARY

Claimant alleged that Respondents misrepresented the inherent risks of a certain equity fund. It was further stated by Claimant that he would not have invested in Merrill Lynch's "Equity Income Fund Select Growth Portfolio - 1995 Series 3" had Mr. Becker been more forthcoming with him about the risks and because the investment itself was inconsistent with his investment objectives and risk tolerance.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant made his own decision on the investment. It was further stated that Respondent

Beckner repeatedly advised Claimant that any investment should be undertaken with a time frame in mind of three to five years. Respondents also stated that Claimant did not advise Beckner that he would not be willing to stick with this investment for that period of time. In addition, Respondents stated that Claimant did not advise them that the funds invested were from a home equity loan that Claimant had taken out from another lender.

RELIEF REQUESTED

Claimant requested an award in the amount of \$51,946.90, plus interest and costs.

Respondents requested that the Claimant's claims for damages be denied in all respects, that the cost of this action, including attorneys' fees, be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Jack Becker did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 (the "NASD").

AWARD

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

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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(s) is(are) Merrill Lynch, Pierce, Fenner & Smith, Inc..

Member surcharge = \$1,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$1,500.00

Forum Fees and Assessments

The Arbitration 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(s) with a single arbitrator x \$300.00	= \$ 300.00
Pre-hearing conference(s): February 11, 2000 1 session	
One (1) Pre-hearing session(s) with Panel x \$500.00	= \$ 500.00
Pre-hearing conference(s): September 30, 1999 1 session	
Four (4) Hearing sessions x \$500.00	= \$2,000.00
Hearing Date(s): March 9, 2000 2 sessions	
<u>March 10, 2000</u> <u>2 session</u>	
Total Forum Fees	= \$2,800.00

The Arbitration Panel has assessed \$1,400.00 of the forum fees to Ken Paul.

The Arbitration Panel has assessed \$1,400.00 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jack Becker.

Fee Summary

Claimant, Ken Paul, shall be and hereby is liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= <u>\$1,400.00</u>
Total Fees	= \$1,550.00
<u>Less payments</u>	= <u>\$ 650.00</u>
Balance Due NASD Regulation, Inc.	= \$ 900.00

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., shall be and hereby is liable for:

<u>Member Fees</u>	= <u>\$3,100.00</u>
Total Fees	= \$3,100.00
<u>Less payments</u>	= <u>\$3,100.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jack Becker, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$1,400.00</u>
Balance Due NASD Regulation, Inc.	= \$1,400.00

All balances are due to NASD Regulation, Inc.

Dated:

Billy Kwan
Public Arbitrator, Presiding Chair

Raymond L. Betts, Esq.
Public Arbitrator

S. James Horning
Industry Arbitrator

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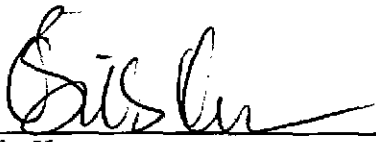
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