

NYSE's arbitration panels biased against workers, a judge finds

BLOOMBERG NEWS

NEW YORK — Merrill Lynch & Co. can't force a former worker to take her sex- and age-discrimination complaint before a New York Stock Exchange arbitration panel because the panels are biased against workers, a federal judge has ruled.

The decision by U.S. District Judge Nancy Gertner in Boston Monday is a rare setback for the securities industry, which for years has won court rulings that deny workers jury trials of their bias complaints.

The securities industry has required workers to arbitrate job disputes as a condition of hiring since 1991, when the U.S. Supreme Court upheld the method in civil rights cases.

If Gertner's ruling stands, it could help plaintiffs in race, age and sex bias cases who contend that arbitration panels run by the NYSE and the National Association of Securities Dealers unfairly favor employers.

"It's about time the courts did their job and didn't just rubber-stamp arbitration agreements," said Cliff Palefsky, a San Francisco attorney for the National Employment Lawyers Association and other employee rights' groups that sided with the former Merrill worker. "The judge found that the system was created to protect the industry and was operated to do so."

At the same time, legal experts say that reversing the trend toward arbitration will be an uphill battle because courts across the country have long upheld mandatory arbitration over the objection of employees who think they will get a better hearing in court.

"Arbitration is entrenched," said employment attorney Jay Waks of Kaye, Scholer, Fierman, Hays & Handler in New York. "At this late date to be saying there is some reason why arbitration should not apply really is against all the other legal precedent."

The suit was filed by Susan Rosenberg, a former Merrill financial consultant in the Boston area, who accused the firm of sex and age discrimination. Merrill denied the bias

charges and asked the judge to send the case to an NYSE arbitration panel.

In a 53-page ruling, Gertner refused Merrill's request.

The judge determined that Rosenberg couldn't get a fair hearing before an NYSE panel. Gertner noted that the NYSE chairman appoints the pool of arbitrators who are assigned to decide cases.

Typically, three panelists with industry experience rule on a grievance. They aren't required to follow legal precedent or to explain why they ruled the way they did. Arbitration rulings can't be appealed, as court rulings can.

The judge also reasoned that Congress, in a 1991 amendment to the civil rights law, intended for discrimination cases to be heard by juries because it created the right to jury trials in bias cases.

"Up until now, many women and minorities who have been discriminated against in the securities industry have been forced to go to industry-dominated arbitration in

which the industry had hand-picked the decision makers — this was unfair," said Rosenberg's attorney, Marc Redlich.

Merrill is considering whether to appeal, said spokesman Bill Halldin.

The NYSE and NASD, which weren't parties to the Rosenberg case, declined to comment.

Some outside legal experts doubt the Boston ruling will be upheld if Merrill chooses to appeal.

"There is a low likelihood that this particular ruling will survive judicial scrutiny," said attorney Ron Green of Epstein Becker & Green in New York.

Others said Gertner's ruling could create a new chain of precedents that could scale back mandatory arbitration, which is being increasingly used outside the securities industry as well.

"This decision could mark the beginning of a reassessment by the courts of mandatory arbitration," said James Lee, head of the U.S. Equal Employment Opportunity Commission office in New York.

Dividends

Tuesday dividends declared.

Pe- Rate Record Pay- riod t date able	Pe- Rate Record Pay- riod t date able	Pe- Rate Record Pay- riod t date able
IRREGULAR	Amoco Corp Q .75 2-11 3-10	IBM Q .20 2-10 3-10
LL&E Royalty .0838 2-5 2-13	CT Fnc'l g Q .25 3-13 3-31	Jameson Inns Q .23 2-4 2-23
Managers Bd Fd .10 1-26 1-28	Con Utis B g Q .41 2-10 3-1	Kennametal Inc Q .17 2-10 2-25
Managers IncoEqt .02 1-26 1-28	Consolidated Edison Q .53 2-18 3-15	Knight-Ridder Q .20 2-10 2-23
Managers InMig .06 1-26 1-28	Desert CommBk CA .07 2-28 3-1	LSI Indus Q .0625 2-10 2-17
Managers ShrInter .09 1-26 1-28	Disney Walt Q .1575 4-9 5-22	Landmark BcsHrs Q .10 2-2 2-17
Monterey BayBanc .07 1-30 2-13	Fst CommBcsHrsA&B Q .085 2-27 3-10	Lexington CpProsps Q .29 1-30 2-13
MuniYld CA Fd .0977 2-6 2-26	Hlticare Realty Q .51 2-4 2-16	Liz Claiborne Q .1125 2-17 2-6
MuniYld NY Insdll .0964 2-6 2-26	Independ FedlSvgsA .25 2-6 2-20	Lundell Petrochem Q .225 2-25 3-15
Taurus MuniCA Hlgs .0613 2-6 2-26	KSB Bancorp n .05 2-2 2-17	Michael Foods Q .05 2-9 2-23
Taurus MuniNY Hlgs .1031 2-6 2-26	Lehman Bros Q .075 2-10 2-27	Mid-Iowa Fnc'l Q .02 2-4 2-24
Terra Nitrogen P .117 2-6 2-27	Metro-Richelieu g x .055 3-2	Miller, Herman Q .0725 2-27 4-15
STOCK	x - record date unannounced.	Money Store Q .04 2-15 3-1
Amoco Corp x 3-31 4-28	Peoples Heritage Q .22 2-6 2-16	Monsanto Co Q .03 2-17 3-12
x-2 for 1 split.	Praxair Inc Q .125 3-6 3-16	NUI Corp Q .245 3-2 3-16
Bk Nova Scotia x 2-12 2-12	USX-Marathon Q .21 2-18 3-10	Natl PropanePlnrsQ .525 2-5 2-13
x-2 for 1 split.	US Trust Q .18 4-10 4-24	New Engl BusnessSvcQ .20 2-6 2-20
Chris-Craft Indus .30c 3-20 4-2	Wackenhut Corp Q .075 2-13 3-3	NJ EcoDev IncBd Q .475 1-31 2-17
Environmntl Tech x 5pc	Warner-Lambert Q .48 2-6 3-10	Norfolk Sthrn Q .20 2-6 3-10
x - dates unannounced.	REGULAR	Norwest Corp Q .165 2-6 3-1
Fst Secur Cp x 2-12 2-24	Atlantic Rchfd Q .7125 2-13 3-13	O Sullivan Cp Q .08 3-9 4-10
x-3 for 2 split.	Automatic DataProcQ.1325 3-13 4-1	Polaroid Cp Q .15 2-27 3-28
Hlticare Techs x	Bk of SantaClaraCA.S .25 2-6 2-20	PoncaBank Q .17 2-6 2-27
x-1 for 4 reverse split; dates unannounced.	Becton Dickinson Q .145 3-6 3-31	Provident FclGrp Q .20 2-6 2-20
Sterling Bncshrs x 2-6 2-20	C&D Techs Q .0275 2-13 2-27	Republic Grp Q .09 2-27 3-16
x-3 for 2 split.	CMS Energy Q .30 2-3 2-20	Schering-Plough Q .19 2-6 2-27
INITIAL	CMS Energy G, Q .31 2-3 2-20	Sobieski Bncp Q .08 2-8 2-22
Bancorp Conn n .13 2-2 2-16	CTC Transport Q .10 2-13 3-13	Sthrn Calif Water Q .315 2-9 3-1
Carey Diversifd .4125 3-31 4-15	CTC Resour Q .25 3-13 2-27	Source Capital Cp Q .18 2-6 2-27
Fst Secur Cp n .13 2-25 3-12	Carol Fincorp Q .06 2-5 2-17	Sid Pacific Q .04 2-13 2-27
RPC Energy n .035 2-10 3-10	Central LA Elec Q .395 2-2 2-15	Student Lnmk adptA, Q .625 3-17 3-31
Sterling Bncshrs n .04 2-6 2-20	Century Bncp NC, Q .50 2-13 2-27	TCW/DW Term 2000A.0465 2-6 2-20
OMITTED	Cilcor Inc Q .615 2-20 3-20	TCW/DW Trm 2002A.055 2-6 2-20
Phosphate ResPlnrs	Circle IncoShrs M .0725 2-20 3-6	TCW/DW Trm 2003A.0525 2-6 2-20
Riverside Forest g	Circle IncoShrs M .065 4-17 5-1	Tastly Baking Q .12 2-13 3-2
SPECIAL	Cousins Proos Q .36 2-10 2-23	UGI Corp Q .36 2-27 4-1
BHC Communications .100 2-10 2-17	Eagle Fnc'l Q .25 2-17 3-2	USX-US Steel Q .25 2-18 3-10
Landmark Bncshrs .10 2-2 2-17	Fortune Brands Q .21 2-11 3-2	Union Camp Co Q .45 3-4 3-13
WVS Fnc'l .190 2-9 2-19	HSB Group Q .60 4-10 4-30	WVS Fnc'l Q .30 2-9 2-19
REDUCED	Harveys Casino Q .05 2-16 3-1	Webster CtlvFcdl Q .20 2-9 2-25
Circle IncoShrs M .065 3-20 4-3	Hi Inco Adv M .05 2-6 2-20	Weyco Group Q .08 3-3 4-1
Peco Energy Q .25 2-20 3-31	Hi Inco Adv II, M .0525 2-6 2-20	Wicor Inc Q .43 2-6 2-27
INCREASED	Hi Inco Adv III, M .06 2-6 2-20	Wireless TelecomGp Q .05 3-23 4-11
Amer Hlth Proos Q .545 2-9 2-23	Home Bncp Elgin Q .10 2-9 2-23	
	Hunt, JB Transp Q .05 2-3 2-17	

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