

Judge Denies Merrill Lynch Motion for Bias Arbitration

Ruling Says NYSE Process Favors the Industry

By Leslie Gevirtz
Reuters

BOSTON, Jan. 27—A federal judge has ruled that a former Merrill Lynch & Co. employee cannot be forced to arbitrate a discrimination dispute with the firm, saying the New York Stock Exchange arbitration system was weighted against her and securities industry workers.

The New York Stock Exchange said today it had no comment on U.S. District Judge Nancy Gertner's ruling on Monday in the case of financial consultant Susan Rosenberg against Merrill Lynch.

Rosenberg, now 50, claims she was the only consultant in a Merrill Lynch office over the age of 40 and outperformed four male colleagues but was the only one to be terminated. Furthermore, she claims she was sexually harassed by a superior in the months before her firing.

Merrill Lynch spokesman Bill Haldin said, "She was terminated for poor performance."

The Boston-based judge found "deeply troubling" the "structural bias in the system—the extent to

which the NYSE arbitration system is dominated by the securities industry, that is, by the employment side of this dispute."

The case attracted the attention of the Equal Employment Opportunity Commission and the American Association of Retired Persons, among others, which submitted friend-of-the-court briefs opposing mandatory arbitration. The Securities Industry Association filed a brief in support of arbitration.

The decision clears the way for Rosenberg to take her claim of age and sex discrimination to court.

Merrill Lynch, which has 30 days to appeal the ruling, had sought to force the case to arbitration, noting that all of its employees, as is the case at almost all U.S. securities firms, sign an agreement that mandates disputes be arbitrated.

"We're reviewing the judge's decision," Merrill spokesman Haldin said.

Rosenberg's attorney, Marc Redlich, said, "It is our hope that as a result of the decision, we will be able to go forward with pretrial discovery and a jury trial."