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Bank of America Merrill Lynch hit with $1.3 million arbitration order

Broker sold Fannie Mae preferred stock despite risk warnings

By Bruce Kelly

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Bank of America Merrill Lynch on Tuesday was ordered to pay a $1.3 million arbitration award to a couple whose broker sold them preferred shares of Fannie Mae stock, allegedly despite multiple warnings of its risk.

Those warnings included a “sell” rating from Merrill Lynch's own analysts on the common stock of Fannie Mae, the commonly used name for the Federal National Mortgage Association.

A three-member Financial Industry Regulatory Authority Inc. panel in Boca Raton, Fla., yesterday issued the award to the investors, Michelle Billings, 65, and her husband, Robert, 71. The two invested $2.3 million in the Fannie Mae preferred shares in July 2008, two months before Fannie Mae collapsed and was placed into conservatorship, wiping out the couple's investment.

Merrill Lynch, Pierce, Fenner & Smith Inc., the formal name for the brokerage registered with Finra, “is found liable for breach of fiduciary duty,” and was ordered to pay compensatory damages, according to the award. The Billingses filed their Finra complaint last year.

“We disagree with the decision,” said Bill Halldin, a Merrill Lynch spokesman. He declined to comment about a potential appeal by Merrill Lynch.

“We're happy that the arbitration panel understood the fiduciary duty and that the broker breached the duty in regard to Fannie Mae preferred shares,” said Jeffrey Erez, the attorney for the Billingses.

On July 15, 2008, Moody's downgraded Fannie Mae preferred stock, and Merrill Lynch removed the shares from its “recommended preferred list” due to significant concerns about the company, according to the complaint.

On July 28, the Billingses began buying Fannie Mae preferred shares, according to the complaint.

“The arbitration panel understood that investors have the right to make informed decision about the investments that they make,” Mr. Erez said.

The Billingses repeatedly asked their Merrill Lynch broker, Miles Pure, to give them research on Fannie Mae, according to the complaint. Mr. Pure was not named in the lawsuit.

“Despite their repeated requests, [Mr.] Pure did not provide the Billingses with Merrill Lynch research on Fannie Mae prior to the company being placed in conservatorship Sept. 7, 2008, and prevented them from learning that Merrill Lynch had taken significant recent action and published recent analysts' reports which reflects its very negative view of the prospects of Fannie Mae,” the complaint said.

“Contrary to [Mr.] Pure's representations, it was Fannie Mae or agency bonds and not the preferred shares which enjoyed the implicit backing of the U.S. government,” according to the complaint. “This critical distinction was either not understood by [Mr.] Pure or intentionally ignored by him in his sale of Fannie Mae preferred shares to the Billingses,” according to the complaint.

Mr. Pure left Merrill Lynch in 2009 and moved to Morgan Keegan & Co. Inc. He did not respond to a call at 2:15 p.m. Wednesday seeking comment about the complaint.