

Pilgrim Baxter Mutual Fund Fraud Litigation

COURT: United States District Court for the District of Maryland
CASE NUMBER: 04-md-15862
CLASS PERIOD: 11/01/1998 - 11/13/2003
CASE TEAM: John J. Mills

Following a hearing on May 3, 2004 in the massive mutual fund litigation, the United States District Court for the District of Maryland appointed BLB&G client the Ohio Public Employees Deferred Compensation Plan ("Ohio Plan"), as Lead Plaintiff in the securities fraud class action against Pilgrim Baxter & Associates ("PBHG"), the investment advisor to PBHG Funds, and others.

The Ohio Plan is seeking to recover funds lost because of "the company's breach of its fiduciary duties." According to a January 23, 2004 press release from former Ohio Attorney General Jim Petro, "[t]housands of Ohio's public servants trusted Pilgrim Baxter with their retirement dollars and the company responded by letting short-term investors reap unjust windfalls. ...Not only did the company lie about monitoring clients who take advantage of short-term price changes, the founders of Pilgrim Baxter also participated in market timing to enrich themselves."

SUMMARY OF ALLEGATIONS:

The complaint in this litigation alleges that Pilgrim Baxter and certain of its senior executives were aware of, engaged in and facilitated "timing" trades in the PBHG Funds: a money-making act involving short-term trading in and out of a mutual fund. The technique is designed to exploit inefficiencies in the way mutual fund companies price their shares, by allowing certain customers to trade shares at distorted prices that no longer reflect the true value of the fund. As a result, those few customers permitted to engage in market timing typically reap huge profits, the cost of which are borne primarily by the long-term investors in the relevant fund. Pilgrim Baxter & Associates, Ltd., Gary Pilgrim and Harold Baxter have all agreed to the entry of cease and desist orders by the SEC resulting from the market timing activity.

As alleged in detail in the complaint, the Defendants knew, or recklessly disregarded the fact, that trades were being timed and that these timed trades negatively and materially impacted the PBHG Funds, thereby causing significant losses to investors in the PBHG Funds. On November 20, 2003, the Securities and Exchange Commission ("SEC") and the Office of the New York Attorney General filed complaints against PBHG, Gary Pilgrim and Harold Baxter, the founders and most senior officers advising PBHG mutual funds, alleging that they permitted certain investors to trade billions of dollars in and out of the PBHG Funds and also engaged in and facilitated market timing for their own personal profit. The SEC and New York State investigations uncovered that, from as early as 1998, dozens of select investors in the PBHG funds were permitted to market time. The Defendants themselves estimate that this illegal activity involved at least \$573 million by 2001.

By way of example, illegal trading was permitted in the PBHG Growth Fund which was managed by Gary Pilgrim himself. An internal PBHG document entitled "Timer Activity Summary" reveals that as of April 20, 2001, investments by entities engaged in market timing activities reached in excess of \$385 million in the Growth Fund alone. During this time, market timers also controlled \$91 million, or 7.5%, of the PBHG Technology & Communications Fund and \$53 million, or 8%, of the PBHG Emerging Growth Fund.

The complaint further alleges that Gary Pilgrim made millions of dollars in profits by creating a hedge fund named Appalachian Trails ("Appalachian") with his wife and closest associates for the purpose of engaging in short-term trading of mutual funds. While ordinary investors were limited to four trades per year into and out of the PBHG Funds, both Pilgrim and Baxter made explicit exemptions for Appalachian and other select investors. While Pilgrim and his cohorts made multi-million dollar profits from the illicit trading of the PBHG Funds, ordinary long-term investors lost as much as 60% of their investments in 2000 and 26% in 2001.

The complaint further alleges that Harold Baxter, another principal of PBHG, provided nonpublic portfolio information to Wall Street Discount Corporation ("WSDC"), a brokerage firm run by Alan Lederfeind, who in turn passed that information on to other clients. By having access to the PBHG Funds' portfolios, these select clients were able to employ sophisticated hedging strategies in timing the PBHG Funds. Indeed, an internal PBHG document reveals that "[a]pproximately \$35,000,000 of theses [sic] assets are attributable to accounts managed by Alan Lederfeind." Furthermore, the document states that PBHG formally "exempted Mr. Lederfeind's accounts from the policy with the understanding that he can only trade in the Growth, Emerging Growth and Technology & Communications Funds"

Throughout this period, PBHG Funds' prospectuses stated shareholders were limited to four exchanges per year between a PBHG money market fund and a PBHG stock fund. In fact, internal PBHG documents and policies acknowledged that market timing was detrimental to long-term shareholders and that exchange limitations were in their best interest. Nevertheless, the special relationship between insiders and select customers prevailed, as market timing persisted. As further alleged in the complaint, various brokers and financial institutions also participated in the market timing schemes, to the detriment of ordinary investors. None of the above detailed material information was disclosed to the members of the Class during the Class Period.

In addition to the profits from their market timing and exchange of insider information, PBHG also profited by charging ordinary investors "in excess of \$250 million" in management fees while breaching their fiduciary duties to those very same investors.

On May 20, 2010, the Court preliminarily approved proposed settlements, totaling \$31,538,600, that would resolve this litigation. On October 25, 2010, the Court entered Judgments granting final approval to the settlements and entered separate Orders granting Plaintiffs' Counsel's application for an award of attorneys' fees and expenses and approving the Plan of Allocation of the settlement proceeds.

On March 9, 2012, the Court entered the Order Approving Distribution Plan. Pursuant to this Order, the distribution of the settlement proceeds to eligible Authorized Claimants occurred on Thursday, April 12, 2012. Subsequent distributions occurred in November 2015, August 2020 and April 2022.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- June 9, 2010 - Mailing Notice
- June 28, 2010 - Long-Form Notice

- May 19, 2010 - Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings in the Pilgrim Baxter Sub-Track
- September 29, 2004 - Consolidated Amended Class Action Complaint