

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Michael J. Smith and Lucy C. Smith

and

02-05737
Omaha, Nebraska

Name of Respondents

Linsco/Private Ledger Corp.
Carson Wealth Management Group
Ronald L. Carson, Jr.

Nature of the Dispute: Customers vs. Member, Non-Member and Associated Person

REPRESENTATION OF PARTIES

Michael J. Smith and Lucy C. Smith ("Claimants") were represented by Gail E. Boliver, Esq., Boliver Law Firm, Omaha, Nebraska.

Linsco/Private Ledger Corp., Ronald L. Carson, Jr. and Carson Wealth Management Group ("Respondents") were represented by Terri L. Combs, Esq., Faegre & Benson LLP, Des Moines, Iowa.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 2002. The Submission Agreement of Claimants Michael J. Smith and Lucy C. Smith was signed on or about October 11, 2002.

The Statement of Answer was filed by Respondent Linsco/Private Ledger Corp., Ronald L. Carson, Jr. and Carson Wealth Management Group on or about December 2, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence, Violations of Nebraska Securities Acts; Violations of NASD Rules of Supervision and Suitability; Violations of Investment Advisory Act of 1940; misrepresentations; negligent supervision; and breach of contract. The causes of action relate to action taken or not taken regarding Level 3 stock and Level 3 option positions held by the Claimants.

Claimants specifically stated the following:

Mr. Carson advised Mr. and Mrs. Smith that he was an expert in wealth management with a national reputation. Mr. Carson advised he was a professional authority on how to protect wealth, wealth management, someone they could trust and preserve their wealth, and someone with particular detailed knowledge about Level 3 stock. Mr. Carson advertises the Linsco/Private Ledge relationship and NASD membership.

Mr. and Mrs. Smith accepted Mr. Carson's [his firm and Linsco/Private Ledger's] offer to manage their assets. They informed Mr. Carson as to their specific retirement and wealth management objectives and had the required documentation completed from which Mr. Carson derived a plan for the management of their portfolio.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

- a. Claimants' Statement of Claim fails to state a claim upon which relief can be granted. Respondents deny liability to Claimants under any of their legal theories.
- b. Claimant's claims are also deficient because they are not based upon representations given in connection with the purchase or sale of a security, as Claimants had already acquired their portfolio, and/or acquired it separately on their own, without regard to Respondents or their advice and not through Respondents as agent.
- c. Ratification - Claimants had full knowledge of and control over their accounts and directed any investments, sales of investments and/or decisions to hold investments; Having made their own investment † decisions and received periodic statements and confirmation slips detailing the transactions in their accounts –or lack thereof—they ratified those decisions. Claimants are not allowed to see how they come out and then recover against others if they are disappointed with the results. The law protects only innocent investors and not one who loses his innocence and then waits to see how his investment turns out before he decides to invoke the provisions of the [securities laws].
- d. Estoppel - The investments in the accounts or determinations not to sell, were made at the express direction of the Claimants, and they are estopped from asserting that the investment decisions were inappropriate.
- e. Statute of Limitations – Claimants' claims are barred by the applicable state and federal statutes of limitations.
- f. Waiver – Claimants were repeatedly advised of the risks associated with no diversifying their account and/or employing strategies to protect against a price deadline. They have therefore waived claims that the investment advice was unsuitable or inappropriate.
- g. Assumption of risk – The Claimants made their investment decision with full knowledge and information about the risks associated with them and assumed the risks in exchange for

- a higher potential rate of return.
- h. Lack of Causation – To the extent Claimants suffered any losses in connection with their investments, those losses were not caused by Respondents but by their own investments, those losses were not caused by Respondents but by their own investment decisions and general movements for which Respondents are not responsible.
 - i. Attorney's Fees – Claimants are not entitled to attorney's fees.

RELIEF REQUESTED

Claimants requested an award in the amount of \$12,000,000.00 in compensatory damages, plus costs, expert fees, attorney's fees, and such other damages as the panel may deem appropriate under the facts of this case.

Respondents requested that the claims asserted against them be denied in their entirety and Mr. Carson's NASD Forum U-4 be expunged of this claim.

OTHER ISSUES CONSIDERED & DECIDED

On December 9, 2003, Mr. Richard Duxbury, Esq. withdrew from the Panel. Mr. Sam Brower, Esq. replaced him on the panel.

Respondents Linsco/Private Ledger Corp., Ronald L. Carson, Jr. and Carson Wealth Management Group did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are 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 are 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 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. Respondents Ronald L. Carson, Jr. and Carson Wealth Management Group, jointly and severally, are liable for and shall pay to Claimants Michael J. Smith and Lucy C. Smith, the sum of \$50,000.00 as compensatory damages.

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 Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Linsco/Private Ledger Corp.

Member surcharge	\$	3,750.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,500.00
Total Member Fees	\$	10,000.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

3	Pre-hearing sessions with a single arbitrator	x	\$450.00	\$	1,350.00
	September 15, 2003		1 session		
	December 19, 2003		1 session		
	January 22, 2004		1 session		
2	Pre-hearing sessions with Panel	x	1,200.00	\$	2,400.00

	April 4, 2003	1	session		
	August 22, 2003	1	session		
10 Hearing sessions		x		1,200.00	\$ 12,000.00
	January 26, 2004	2	sessions		
	January 27, 2004	2	sessions		
	January 28, 2004	2	sessions		
	January 29, 2004	2	sessions		
	January 30, 2004	2	sessions		
	Total Forum Fees				\$ <u>15,750.00</u>

The Arbitration Panel has assessed \$15,750.00 of the forum fees jointly and severally to Ronald L. Carson, Jr., and Carson Wealth Management Group.

Fee Summary

Claimant, Michael J. Smith and Lucy C. Smith, shall be and hereby is liable for:

Initial Filing Fee	= \$	600.00
<u>Total Fees</u>	= \$	600.00
<u>Less payments</u>	= \$	-2,400.00
Refund due to the Claimant	= \$	1,800.00

Respondent, Linsco/Private Ledger Corp., shall be and hereby is liable for:

Member Fees	= \$	10,000.00
<u>Adjournment Fee</u>	= \$	1,200.00
Total Fees	= \$	11,200.00
<u>Less payments</u>	= \$	-28,250.00
Refund due to Respondent Linsco/Private Ledger Corp.	= \$	17,050.00

Respondents, Ronald L. Carson, Jr. and Carson Wealth Management Group shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	15,750.00
Total Fees	= \$	15,750.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	15,750.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Sam Brower, Esq. - Public Arbitrator, Presiding Chair
James R. Baratta - Public Arbitrator
Richard L. Mitchell - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sam Brower, Esq.
Sam Brower, Esq.
Public Arbitrator, Presiding Chair

2/12/04
Signature Date

/s/ James R. Baratta
James R. Baratta
Public Arbitrator

2/12/04
Signature Date

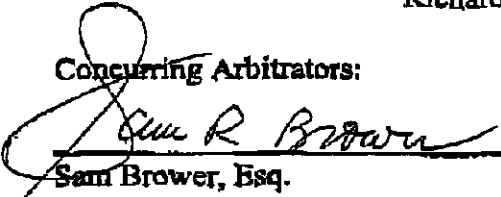
/s/ Richard L. Mitchell
Richard L. Mitchell
Non-Public Arbitrator

2/12/04
Signature Date

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James R. Baratta - Public Arbitrator
Richard L. Mitchell - Non-Public Arbitrator

Concurring Arbitrators:



Sam Brower, Esq.
Public Arbitrator, Presiding Chair

2/12/27
Signature Date

James R. Baratta
Public Arbitrator

Signature Date

Richard L. Mitchell
Non-Public Arbitrator

Signature Date

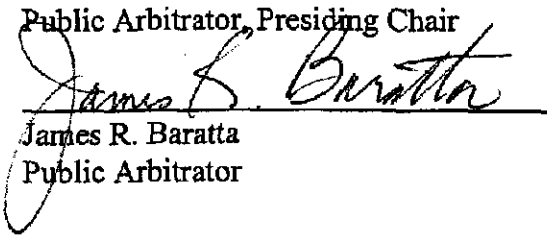
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Public Arbitrator


Signature Date

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Non-Public Arbitrator

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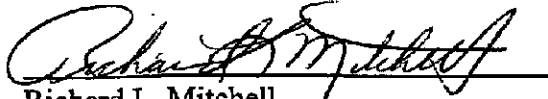
Concurring Arbitrators:

Sam Brower, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James R. Baratta
Public Arbitrator

Signature Date


Richard L. Mitchell
Non-Public Arbitrator

Feb. 12, 2004
Signature Date