



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant(s)

George, Robert, Thomas & Steven G. Leonard

88-03529

Name of Respondent(s)

Merrill Lynch Pierce Fennner & Smith Inc
Thomas H. Henson
James A. Ward
Russell G. Mann, Jr.

REPRESENTATION

For Claimant: Joseph H. Spiegel, Esq.

For Respondent: Dennis K. Egan of Butzel Long.

CASE INFORMATION

Statement of Claim filed: November 11, 1988.

Claimant's Submission Agreement signed on: November 10, 1988.

Respondents' Joint Statement of Answer filed: December 26, 1989.

HEARING INFORMATION

Hearing Date/Sessions: 6/18/91-Two (2) Sessions.

6/19/91-One (1) Session.

7/31/91-Two (2) Sessions.

8/01/91-Two (2) Sessions.

Pre-Hearing Telephone Conference: June 4, 1991-One (1) Session.

Post-Hearing Telephone Conference: November 13, 1991-(1) Session.

Hearing Location: Southfield, MI

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CASE SUMMARY

Claimants alleged that Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill"), Thomas H. Henson ("Henson"), James Ward ("Ward") and Russell Mann ("Mann"), are all responsible for the losses in their account which was handled by Henson, an account executive at Merrill. Claimants alleged that from about July through early October of 1982, when Henson was experiencing serious personal problems and abusing alcohol, he violated Claimant's stated investment objectives, that of safe and secure investments. Claimants contended that Respondents are liable under the following: 1934 Securities Exchange Act Anti-Fraud Provisions; RICO; Michigan Blue Sky Law; and that Respondents are further liable for Common Law Fraudulent Misrepresentation; Breach of Common Law Fiduciary Duty and violation of the Michigan Consumer Protection Act. Claimants also alleged that Henson's trading pattern constituted churning and that Merrill and Ward and Mann, as officers of the firm, failed to supervise their employee, Henson.

Respondents denied each and every allegation of wrongdoing contained in the Statement of Claim and maintained that Claimant, George Leonard, is a millionaire businessman, experienced in a variety of risky business and investment ventures who was fully aware that he was trading options, that options were inherently risky investments and that he accepted the risk in the hope of high returns. Respondents contended that Claimants' losses were caused by adverse market movement and Claimants' own conduct, not any wrongdoing by Respondents. Respondents further contended that the allegations that Henson abused alcohol while dealing with Claimants' account is unfair, inflammatory and false.

RELIEF REQUESTED

Claimants requested that the panel enter an award against all respondents jointly and severally as follows: (1) Compensatory damages in an amount to be determined by the panel; (2) Rescission of all fraudulent transactions pursuant to Section 29(b) of the Exchange Act. 15 U.S.C. Section 78 c(c); (3) \$100,000.00; (4) Interest on \$100,000.00 from the date of each investment; (5) Exemplary damages; (6) such other just and equitable relief as the panel deems necessary and proper; (7) Costs and attorneys' fees; (8) Treble damages and attorneys' fees pursuant to RICO.

Respondents requested that the panel deny Claimants' Claims and contested Claimants' computation of damages.

OTHER ISSUES CONSIDERED & DECIDED

Subsequent to the final hearing session, Claimants submitted a post hearing submission dated August 16, 1991 which included affidavits of several individuals for submission to the panel for consideration. Respondents objected to this post-hearing submission of Claimants by letter dated August 19, 1991. The panel unanimously decided to disallow the introduction into the

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record of the affidavits submitted by Claimants but suggested that motions from the Parties for reopening of the hearing for the examination and cross examination of the affiants would be entertained. Claimants opted to move for the reopening of the hearing in a written motion dated August 28, 1991 to which Respondents objected in a written motion dated August 30, 1991.

Before the panel considered the motion and the objection one of the panel-members, Martin Hayden, public arbitrator, passed away on September 8, 1991. At this point the parties had the option pursuant to Section 24 of the Code of Arbitration Procedure to either go forward with the remaining two arbitrators or to request the appointment of a replacement for Mr. Hayden. Claimants exercised their right under Section 24 of the Code of Arbitration Procedure and requested that Mr. Hayden be replaced. Mr. Hayden was replaced by Public Arbitrator, Alan Schenk, on October 21, 1991. Mr. Schenk reviewed all pleadings, exhibits and tapes of the hearing. The panel conferred and a post hearing conference among the panel and the parties was held on November 13, 1991 for the purpose of oral argument of the parties with respect to their motions for and against reopening the hearing.

After careful consideration and deliberation on the matter the panel unanimously decided not to re-open the hearing and rendered the following award:

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All Claims, including the Claims for exemplary damages, treble damages and attorneys fees under RICO, of the Claimants, George H. Leonard, Jr., Robert E. Leonard, Thomas R. Leonard and Steven G. Leonard, shall be and are hereby dismissed in all respects;
2. The parties shall each bear their respective costs including attorneys' fees;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by the Claimants and the following Forum fees are assessed:

FORUM FEES

7 sessions X \$750.00 = \$5,250.00

1 pre-hearing telephone conference session = \$300.00

1 post-hearing telephone conference session = \$300.00

Total amount assessable = \$5,850.00.

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Forum fees assessed against:

- 1- Claimants, in the amount of \$2,925.00; however, Claimants may use their \$300.00 hearing session deposit (partial) to offset part of this fee, thereby the amount due and owing equals \$2,625.00;
- 2- Respondents, jointly and severally in the amount of \$2,925.00.

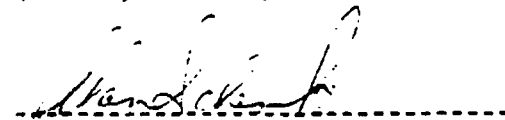
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL


Concurring arbitrators' Signatures:



Robert J. Scafuri, Esq.
(Public/Chairman)



Alan Schenk
(Public/Panelist)



Joseph R. Papo
(Industry/Panelist)

Date of Decision: January 7, 1992