



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

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

Donald E. Clark

90-00025

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Wendell C. Hoover

REPRESENTATION

For Claimant: Timothy M. Miller, Esq. and David K. Higgins, Esq. of the
Law Firm of Robinson & McElwee.

For Respondent: Laura H. Robison, Esq. and Paul Stivers, Esq. of the law
firm of Rogers & Hardin.

CASE INFORMATION

Statement of Claim filed: January 9, 1990.

Claimant's Submission Agreement signed on: December 5, 1989.

Joint Statement of Answer filed by Respondents on: February 26,
1990.

Respondent Merrill Lynch Pierce Fenner & Smith Inc.'s Submission Agreement
signed on: February 26, 1990.

Respondent Wendell C. Hoover's Submission Agreement signed on: February 26,
1990.

HEARING INFORMATION

Hearing Dates/Sessions: August 22, 1992, 2 Sessions
August 21, 1992, 2 Sessions
August 20, 1992, 2 Sessions
August 19, 1992, 2 Sessions
July 21, 1992, 2 Sessions
July 20, 1992, 2 Sessions

Hearing Location: Washington, DC.

CASE SUMMARY

Claimant alleged that his accounts at Merrill Lynch Pierce Fenner & Smith, Inc. were discretionary accounts and Respondents made misrepresentations to him; therefore, Claimant consented to reactivation of options and continued equity trading in his accounts and abandoned his decision to purchase municipal bonds. Claimant further alleged Respondents failed to notify him when his accounts failed to meet agreed upon investment objectives and intentionally misled Claimant as to the performance of his account and Respondents affirmatively misrepresented to Claimant that his accounts contained substantially more earned income than was reflected on the monthly statements or that in fact existed. Claimant further alleged Respondents' actions entitled him to treble damages under the RICO statute, attorneys' fees and punitive damages.

Respondents maintained there is no basis for Claimant's allegations and Merrill Lynch Pierce Fenner & Smith Inc. and its employees acted in good faith at all times and undertook to handle the transactions in the accounts in full accordance with their understanding of what Claimant wanted and Claimant was fully informed of all transactions in each of his accounts and enlisted the assistance of his secretary, accountant and lawyer to help him review and evaluate his accounts. Respondents further maintained no guarantees were made to the Claimant and Wendell C. Hoover and Donald E. Clark thoroughly discussed the strategy they would pursue and discussed Claimant's investment goals. Respondents further maintained they merely expressed an opinion to Claimant they thought they could reach Claimant's goals and Claimant knew from the outset that the strategy he had chosen was subject to market conditions and risks and no one could guarantee the outcome. Respondents further maintained they were not liable to Claimant in any amount because Claimant suffered no damages as a result of any wrongful action of Merrill Lynch Pierce Fenner & Smith, Inc. or Wendell C. Hoover and any disputes are the result of an honest misunderstanding not fraud and not criminal activity under the RICO statute and Claimant is not entitled to punitive damages or damages under the RICO statute.

RELIEF REQUESTED

Claimant requested damages of \$2,513,239.00 plus interest at a rate of 10% per annum since January 1986 plus punitive damages in an amount determined by the panel and attorneys' fees and damages under the RICO Statute and costs, fees and expenses related to the proceeding.

Respondents requested the panel dismiss Claimant's claims in their entirety and tax all costs against Claimant.

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. The Respondents be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$442,233.00, inclusive of interest.
2. The Claimant's request for punitive damages is denied.
3. The Claimant's request for damages under the RICO statute is denied.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

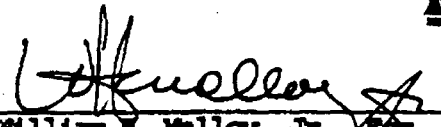
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

\$1,500.00 X 12 = \$18,000.00 less hearing session deposit of
\$1,500.00 = net \$16,500.00 due.

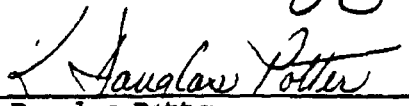
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$8,250.00 to represent forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$8,250.00 to represent forum fees.

The NASD shall retain the \$300.00 claim filing fee previously deposited by the Claimant.

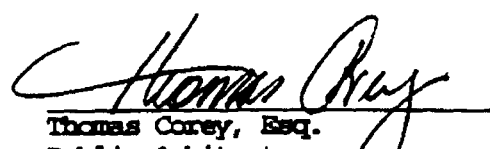
ARBITRATOR SIGNATURES



William H. Malloy, Jr., Esq.
Public Arbitrator



K. Douglas Potter
Industry Arbitrator



Thomas Corey, Esq.
Public Arbitrator

Date of Decision: November 20, 1990