

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Richard M. Ladden

91-00636

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc

Joseph Thomas

REPRESENTATION

For Claimant: Richard M. Ladden (Pro per)

For Respondents: Gary Gleason, Esq. and Philip McLeod, Esq. of Keesal, Young and Logan

CASE INFORMATION

Statement of Claim filed: 2/27/91

Claimant's Submission Agreement signed on: 2/19/91

Statement of Answer filed by Respondents on: 8/12/91

Respondents' Submission Agreements signed on: 8/8/91

HEARING INFORMATION

Pre-Hearing Conference(s) : None

Hearing Date(s)/Session(s): January 16, 1991 / two sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged that there was an agreement by Joe Thomas, which in effect, was an agreement to share losses; that claimant's "account objective" was falsified so as to justify the speculative account activity alleged herein; violation of New York Stock Exchange Rule 405 (1); violation of NASD Rules of Fair Practice, Article III, Section 2; breach of fiduciary duty; a continuous course of misrepresentations and omissions; and practices, which if not illegal and/or violations of NYSE and NASD rules, would seem to be unethical. The allegations were made in connection with transactions in Lotus Development Corporation stock.

Respondents denied each and every allegation of wrongdoing set forth in the Claim and denied that they are liable to Claimant in any amount. Respondents asserted seven affirmative defenses.

RELIEF REQUESTED

Claimant requested 1) compensatory damages of \$40,087 or alternatively rescission of the transaction; 2) interest of \$21,767; 3) loss of investment income of approximately \$15,000; 4) punitive damages of approximately \$150,000; 5) treble damages of approximately \$228,000; and 6) attorneys fees of approximately \$10,000.

Respondents requested that the Statement of Claim be dismissed in its entirety with costs assessed against Claimant, together with such other relief as the Arbitrators may deem just.

OTHER ISSUES CONSIDERED AND DECIDED

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.

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. Each and every claim of Claimant is dismissed.
2. Claimant's request for punitive damages is dismissed.
3. Claimant's request for treble damages is dismissed.
4. Claimant's request for attorney's fees is dismissed.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200 nonrefundable filing fee and the \$750 hearing session deposit paid by the Claimant. Respondents Merrill Lynch and Thomas are jointly and severally assessed forum fees in the sum of \$750. Forum fees were calculated as follows: 2 hearing sessions x \$750 = \$1500 minus the hearing session deposit previously paid by Claimant = \$750.

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

ARBITRATION PANEL

Signatures

Kenneth L. Thompson
Kenneth L. Thompson

Date of Decision: _____

DATE SERVED: 02/19/92