

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

COPY

In the Matter of the Arbitration Between

Name of Claimant

Edward Perlman

No. 92-00459

Name of Respondents

Jeffrey C. Pellar
Rodman & Renshaw, Inc.

REPRESENTATION OF PARTIES

For Claimant: Claimant appeared pro se.

For Respondents: Thomas P. Fitzgerald, Esq. of Altheimer & Grey,
Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: February 5, 1992.

Claimant's Submission Agreement signed on: January 28, 1992.

Joint Statement of Answer and Motion to Dismiss pursuant to
Section 16 of the NASD Code of Arbitration Procedure filed by
Respondents, Jeffrey C. Pellar and Rodman & Renshaw, Inc. on:
April 3, 1992.

Respondent Rodman & Renshaw, Inc.'s Submission Agreement signed
on: March 3, 1992.

Respondent Jeffrey C. Pellar's Submission Agreement signed on:
March 3, 1992.

HEARING INFORMATION

On June 3, 1992, a telephonic hearing was held in Chicago,
Illinois, pursuant Section 14 (a) of the NASD Code of Arbitration
Procedure (the "Code") and by the request of the parties, on the
issue of the Motion to Dismiss under Section 16 of the Code which
had been filed by the Respondents. The hearing was one (1)
session in length.

CASE SUMMARY

Claimant, Edward Perlman ("Claimant") alleged unauthorized trading by Respondents Jeffrey C. Pellar and Rodman & Renshaw, Inc. ("Respondents"). The allegation arose out of the sale of covered calls in Union Carbide stock in October of 1990. Claimant alleged that Respondents did not discuss the trade with him, and that after receiving his confirm, Claimant had inquired why the trade had been made. Claimant further alleged that Respondents had, "...Told me that the stock would trade below 15 and we should be able to buy the calls back at a profit." Claimant also alleged that when the stock had been subsequently called at 15 on November 7, 1990, Respondents represented to him that the stock would go under 15, and that Claimant would be able to buy the calls back at a profit. Lastly, Claimant alleged that as of January, 1992, the Union Carbide stock had a range of 16 3/8 to 24 3/4, and the calls had never been bought back for his account.

For their joint Motion to Dismiss pursuant to Section 16 of the Code, and Answer, Respondents asserted that Claimant's claim was barred by the federal statutes of limitation. The Respondents also asserted that the claim had been filed more than one year after actual discovery of his claim, or after Claimant should have known of the claim through the exercise of reasonable diligence based on the fact that Claimant had received the confirmation of the transaction, and the monthly account statements shortly after the disputed transaction had taken place.

On May 6, 1992, Respondents filed a request for hearing on their Motion to Dismiss, and also requested that an arbitrator be appointed to decide the Motion. On May 14, 1992, a letter had been sent to the NASD advising the NASD that the parties would be available for a hearing on the Motion June 2 or 3, 1992. After conferring with the undersigned arbitrator, June 3, had been set for the hearing.

After the hearing had been held on June 3, 1992, the arbitrator had requested copies of the cases relied on by the parties to support their arguments for and against dismissal of Claimant's claim. At the hearing, Claimant relied on the case of Geisenberger v. John Hancock Distributors, Inc., 774 F.Supp. 1045 (S.D. Miss. 1991). Respondents relied on the case of Lampf, Pleva, Lipkind, Prupis & Petigrow v. John Gilbertson, et al., 501 US ___, 115 L Ed 2d 321, 111 S Ct 2773, June 20, 1991, to support their position for Dismissal of the claim. The case citations

were sent to the undersigned arbitrator on June 11, 1992. The arbitrator held the case open to receive any responses from the parties concerning the case submissions.

On June 23, 1992, the NASD received a response to the case submission from Claimant. On July 9, 1992, Claimant made a response to Respondents' June 23, 1992 letter, and also sent copies of letters sent to Respondents concerning the above-referenced dispute. Both responses had been forwarded to the chairman on July 13, 1992.

Respondents made their last response to Claimant's submissions on July 14, 1992. On July 17, 1992, Claimant filed his last response concerning this matter. On July 21, 1992, both responses were then forwarded to the chairman for review.

RELIEF REQUESTED

Claimant requested that he be awarded damages arising out of the November 1990 call of his Union Carbide stock at a price of 15.

Respondents requested that the claim be dismissed, and an award of extended cost including reasonable attorneys' fees incurred in responding to and defending Claimant's claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to a hearing pursuant to Section 14 (a) of the Code, and to abide by the decision of the arbitrator who had been selected at the request of the parties, and approved by the parties.

AWARD

After considering the pleadings, the Motion to Dismiss, the testimony given at the hearing held on June 3, 1992 pursuant to Section 14 (a) of the Code, and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination. Without making a

finding on the merits of the case, the undersigned arbitrator rules as follows:

1. Respondents, Jeffrey C. Pellar and Rodman & Renshaw, Inc.'s Motion to Dismiss pursuant to Section 16 of the Code is hereby granted. The parties are hereby referred to the remedies provided by applicable law.

OTHER COSTS

2. Each party shall bear their own costs of this arbitration, except as set forth below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing sessions X \$300.00 = \$300.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall refund the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$300.00 are assessed jointly and severally against the Respondents.

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

Dated:

September 4, 1992

s/Alan J. Fisher
Alan J. Fisher
Presiding Chair
Public Arbitrator

Date of service by the NASD:

September 4, 1992