

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jimmy C. Cox

Case No. 92-02137

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant, Jimmy C. Cox ("Cox"): J. Reese Daniel, Esq. of Daniel & Daniel.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Charles L. Henderson, Esq. of Merrill Lynch.

CASE INFORMATION

Statement of Claim filed: February 7, 1992. Claimant's Submission Agreement signed: February 7, 1992.

Respondent's Statement of Answer filed: August 26, 1992. Respondent's Submission Agreement signed by George A. Schrierer on August 24, 1992.

HEARING INFORMATION

On May 6, 1993, in Charlotte, NC, a hearing lasting one session was conducted.

CASE SUMMARY

Claimant alleged that Respondent failed to monitor and to service his investment in Prime Motor Inns despite assurances by Respondent that account would be monitored. Claimant alleged that the failure of Respondent's Financial Consultant to carry through with his service responsibilities resulted in substantial losses to Claimant.

Respondent denied all allegations of wrongdoing and stated the following affirmative defenses: that the Statement of Claim failed to state claims upon which relief can be granted; recovery is barred by Claimant's directing, authorizing; consenting too, acquiescing in and/or ratifying all

account transactions; Claimant's losses were caused by his own investment decisions or due to market conditions beyond Respondent's control; each transaction was expressly authorized and approved by Claimant before execution; Respondent acted at all times properly and in good faith; all transactions were conducted in accordance with applicable rules and regulations, confirmed in writing, and reflected on monthly statements to Claimant; Claimant failed to mitigate his damages, if any. Respondent contended that based upon the foregoing no award is warranted.

RELIEF REQUESTED

Claimant requested \$15,000 actual damages plus unspecified punitive damages.

Respondents requested dismissal of the Claim, plus attorney's fees, costs, and expenses incurred in defense of this action.

OTHER ISSUES CONSIDERED & 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 originals remain on file with the NASD.

AWARD

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

1. Respondent, Merrill Lynch, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's request for punitive damages is denied.
3. Respondent's request for attorney's fees is denied.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$400.00 (one (1) hearing session X \$400.00).

1. Claimant is hereby assessed forum fees of \$200.00 for which the NASD shall retain the \$400.00 previously paid by Claimant in full satisfaction thereof.
2. Respondent is hereby assessed forum fees of \$200.00 which shall be paid directly to Claimant.
3. The NASD shall retain the \$100.00 non-refundable filing fee paid by Claimant.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
John F. Snyder, Esq.

Public/Chairman

/s/
Drew Waterbury

Industry

/s/
Jeff R. Truluck, Esq.

Public

Date of Decision: June 30, 1993