

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

William F. Stephenson, M.D.

92 03224

and

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION OF PARTIES

William F. Stephenson, M.D. ("Claimant") was represented by Jeffrey L. Smith, Esq. and Michael E. Lindsey, Esq. of Cohen Brame & Smith, Denver, Colorado.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") was represented by Dennis M. Pape, Esq. and Michael E. Olney, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 24, 1992. Submission Agreement of Claimant William F. Stephenson, M.D. was signed on September 22, 1992. Response to Motion to Dismiss was dated July 5, 1994.

Statement of Answer was filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on or about June 28, 1993. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on June 28, 1993 by Dennis M. Pape. Motion to Dismiss dated July 8, 1994. Letter request for dismissal of claims was filed on or about March 23, 1994.

HEARING INFORMATION

A telephonic hearing was held on Thursday, July 14, 1994 for one (1) session with all arbitrators to hear argument on Respondent's Motion to Dismiss and certain discovery matters.

The hearing was held on Wednesday, July 20, 1994 for two (2) sessions, Thursday, July 21, 1994 for two (2) sessions and Friday, July 22, 1994 for one (1) session in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

The Statement of Claim alleged: breach of fiduciary duty; failure to supervise; unsuitable trading; churning; common law fraud; and violation of state and federal securities laws. Claimant specifically alleged that beginning in 1985, the Claimant, through Merrill Lynch, began trading in uncovered options. During the course of trading uncovered options, Respondent never advised him of the extreme risk he was undertaking in engaging in uncovered option transactions on a margin account. In the fall of 1987, Claimant suffered substantial losses in his accounts.

The specific allegations asserted against Merrill Lynch were denied. Respondent asserted the affirmative defense that the claims asserted in this matter are time barred by the applicable statutes of limitations. Respondent stated that: Claimant has been engaged in options trading, either for himself or in behalf of others, since, at least 1974; Claimant at all times, was an experienced and knowledgeable investor, who traded options on a totally unsolicited basis, with full knowledge and awareness of the risk entailed; and Claimant actively traded both put and calls, both covered and uncovered, up to October, 1987 for his account and for the accounts of other family members who had given Claimant powers of attorney to trade their accounts. Respondent also stated that all recommendations and advice provided to Claimant by Merrill Lynch and the broker were suitable for his account.

RELIEF REQUESTED

Claimant requested an award of:

1. consequential damages including but not limited to the following:
 - * in the approximate amount of \$345,000, plus interest;
 - * the difference between the value of those securities liquidated by Merrill Lynch to meet margin calls had he held those securities and their liquidation price, plus dividends;
 - * excessive commissions paid to Merrill Lynch; and
 - * margin interest paid to Merrill Lynch.
2. exemplary damages.
3. Attorneys' fees.

Respondent requested that the arbitrators dismiss the claim in full and assess all costs against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

At the telephonic hearing was held on Thursday, July 14, 1994, the undersigned arbitrators heard argument on the Respondent's Motion to Dismiss. After the conclusion of the hearing the parties were advised of the panel's decision. The panel determined to take the motion under advisement and granted Respondent leave to renew the motion at the conclusion of the Claimant's case in chief.

At the conclusion of the Claimant's case in chief, Respondent asserted two motions. The motion to dismiss the churning claims asserted in Count Four of the Statement of Claim were dismissed by stipulation of the parties. Respondent renewed its' Motion to Dismiss based upon §15 and the applicable statutes of limitations. After hearing the arguments of the parties, the hearing was adjourned for the day. At the commencement of the third day of hearing, the panel after affirming that the Claimant had no further evidence to present, advised the parties of its' decision to **grant** the Motion to Dismiss. Furthermore, the panel also advised the parties, that had it been presented with a Motion to Dismiss for Failure to Prove a Prima Facie Case, that motion would have been granted.

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 and the pre-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

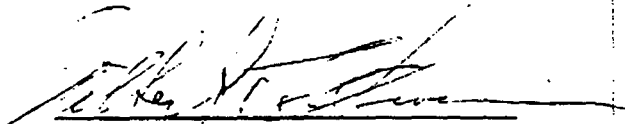
1. The Motion to Dismiss shall be and hereby is **granted**.
2. Each party shall bear its own costs, expenses and fees incurred in this matter, including attorneys' fees and expert witness fees not specifically enumerated herein.

FORUM FEES

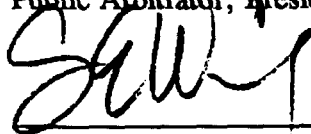
Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were six (6) sessions x \$750 = \$4,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of

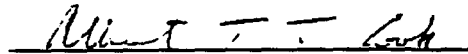
\$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant. Claimant shall be and hereby is liable for and shall pay to the NASD the sum of \$3,750 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.



Gilbert L. McSwain, Esq.
Public Arbitrator, Presiding Chair



Samuel E. Wing, Esq.
Public Arbitrator



Albert T.T. Cook
Industry Arbitrator

Dated:

7-22-94

7-22-94

7-22-94