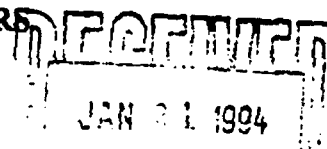


N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS



In the Matter of the Arbitration Between

Name of Claimants

Norman and Dolores Pubanz

92-04127

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Terry Gordon Cleaves

REPRESENTATION

For Claimants, Norman and Dolores Pubanz ("Pubanz"): James R. Leone, Esq.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("ML") and Terry Gordon Cleaves ("Cleaves"): George J. Felos, Esq. of Felos & Felos.

CASE INFORMATION

Statement of Claim filed: 12/8/92.

Claimant's Submission Agreement signed on: 12/4/92.

A joint amended Statement of Answer filed by Respondents, ML and Cleaves: 9/8/93.

Respondents did not submit executed Submission Agreements as required under Sections 12 and 25 of the Code of Arbitration Procedure

HEARING INFORMATION

A hearing with the full Panel was conducted on: 11/19/93.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimants alleged that they are unsophisticated investors and that despite their stated investment objectives of preservation of capital and low risk, Respondents solicited and recommended to them highly risky investments sponsored by Respondent, ML and Merrill Lynch Life in order for Respondents to realize commissions. Claimants alleged that Respondents' actions constituted breach of contract; common law securities fraud; negligence and gross negligence; violation of securities regulations.

Respondents denied each and every allegation of wrongdoing contained in the Statement of Claim and maintained that Claimant, Norman Pubanz, is a speculator who was gripped with a "survivalist" mentality during the time of controversy, 1986 and early 1987 and that Cleaves prepared an investment plan which met Claimants' needs and that had Claimants stayed with it, would have secured their future. Respondents further maintained that all aspects of the investment plan were discussed in detail with Claimants and that Claimants discussed it in detail with their accountant and fully approved each and every one of the investments. Additionally, Respondents stated that Claimants' Claims are barred by the statute of limitations and further, made a Motion to Dismiss pursuant to said statute. Respondents also made a Motion for Summary Decision on the grounds that the Statement of Claim and depositions of Claimants show that there is no genuine issue as to any material fact.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the approximate amount of \$610,298.64, punitive damages, reasonable attorney's fees and expenses, prejudgment and post-judgment interest and costs of this action.

Respondents requested dismissal of the Statement of Claim and that Respondents be awarded costs and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

At the request of Respondents a hearing was held on November 19, 1993 to decide the following issues:

1. Motion to Dismiss Claims Ineligible for Submission to Arbitration.

2. Motion For Summary Decision.
3. Motion to Dismiss Statement of Claim pursuant to Statute of Limitations.

AWARD

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

1. The parties stipulated to the fact that the Motion to Dismiss Claims Ineligible for Submission to Arbitration with respect to Section 1 of the Code as it applies to the insurance claims were voluntarily dismissed without prejudice, therefore, the motion was moot (the parties did not seek any recovery).
2. Respondents' Motion for Summary Decision is hereby denied.
- 3.(a). Respondents' Motion to Dismiss Claims pursuant to Section 15 of the Code of Arbitration Procedure is hereby denied. The Panel found that the Claim was filed within the six-year eligibility period.
- 3.(b). Respondents' Motion to Dismiss Statement of Claim pursuant to Statutes of Limitations is hereby granted on all counts. The panel found that the last conceivable event or occurrence giving rise to the various causes of action occurred on or about July of 1987, consequently, all claims are barred by applicable statutes of limitations which are as follows: Five years for breach of a written contract, Section 95.11(2)(b), Florida Statutes; four years for breach of an oral contract, Section 95.11(3)(k); four years for fraud and willful breach of fiduciary duty, Section 95.11(3)(j) and (p); four years for negligence, Section 95.11(3)(a); two years for violation of the Florida Securities Investor Protection Act, running from the time the facts giving rise to the cause of action were discovered or should have been discovered with exercise of due diligence, but not more than five years from the date of violation, Section 95.11(4)(e); and for violation of the Securities Act of 1933 and the Securities Exchange Act of 1934, one year from the time of discovery of the facts which are the basis of a claim, with a maximum period of repose of three years from the events claimed of, 15 U.S.C. Section 77m, 78i(e), 78r(c) and 78cc(b), Lampf, Pleva, Lipkind, Prubis and Petigrow v. Gilbertson, 111 S.Ct. 2773 (1991); and for violation of rules of the NASD and New York Stock Exchange, (which are not, cognizable, independent causes of action) four years, Section 95.11(3)(p), Florida Statutes.

OTHER COSTS

The parties shall each bear their own costs incurred in connection with this proceeding including attorney's fees.

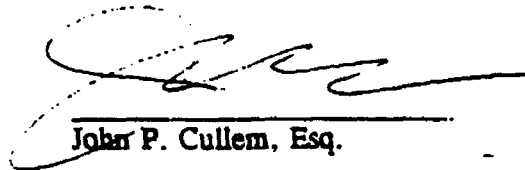
FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,000.00 (One (1) hearing session X \$1,000.00).

1. Claimants are hereby assessed forum fees in the amount of \$500.00 for which the NASD shall retain the \$1,000.00 previously deposited in full satisfaction thereof.
2. Respondents are hereby jointly and severally assessed forum fees in the amount of \$500.00 to be paid directly to Claimants.
3. The NASD shall retain the non-refundable filing fee of \$250.00 previously paid by Claimants.

ARBITRATION PANEL

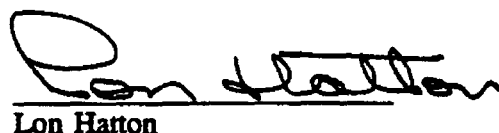
Concurring Arbitrators' Signatures


John P. Cullem, Esq.

Public/Chairman


John F. Geraci

Public/Panelist


Lon Hatton

Industry/Panelist

Date: 2/4/94