

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Daryl L. James, Jr., Trustee of
the Daryl L. James, Sr. Living Trust Dated
October 8, 1985

NASD Arbitration
No. 93-04541

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION

For Claimant: Paul N. Young, C.E.O., Securities Arbitration Group,
Inc., Marina del Rey, California

For Respondent: Thomas L. Taylor, III, Esq., Jones, Bell, Simpson
& Abbott, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: October 21, 1993

Amendment to Claim filed: February 23, 1995

Claimant's Submission Agreement signed: February 1, 1994

Statement of Answer filed by Respondent: April 1, 1994

Respondent's Submission Agreement signed: April 5, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):
February 16, 1995 (one session)

Hearing Date(s)/Session(s): July 31, 1995 (two sessions)
August 1, 1995 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged a cause of action for declaratory relief against Respondent and further alleged that Respondent was negligent in advising Claimant to place Claimant's trust assets with Lexington Capital Management (Lexington) and in stocks, limited partnerships and mutual funds. Claimant further alleged unsuitability and breach of fiduciary duty with respect to Claimant's investments.

Respondent denied Claimant's allegations of wrongdoing and alleged that because of the size of Claimant's account, Claimant's Merrill Lynch financial consultant recommended that Claimant consider using the services of Lexington, a professional money manager, and that this recommendation was made in May of 1987, more than six years before the Statement of Claim was filed in this matter. Respondent further alleged that Claimant, in writing, appointed Lexington as Claimant's agent and attorney-in-fact, with full power and authority to invest in various securities; that Claimant specifically instructed Respondent in writing to follow the instructions of Lexington in every respect with regard to Claimant's investments; that Claimant, in writing, expressly ratified all transactions effected by Lexington and agreed to indemnify and hold Respondent harmless for any loss, liability or damage sustained as a result of transactions effected on Claimant's behalf by Lexington; and that Claimant's real complaint is against Lexington. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. A declaration that Respondent is and was a fiduciary to Claimant, and is liable to Claimant for the subject diminution in value of the trust assets placed with Lexington, and other trust assets not limited to stocks, limited partnerships and mutual funds in an amount to be determined according to proof;

2. Pre-judgment interest on all damages pursuant to California Civil Code Sections 3287 and 3288;
3. Costs;
4. Reasonable attorneys fees; and
5. Such other and further relief as the panel deems just and proper.

Respondent requested:

1. That Claimant take nothing by reason of his Statement of Claim, and that an Award be entered in favor of Respondent;
2. Costs; and
3. Any further relief the panel deems proper.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the stipulation by the parties, the above-captioned matter was submitted to arbitration on or about June 1, 1993, by the Superior Court of the State of California for the County of Riverside, Indio Branch.

On or about May 25, 1995, the panel of arbitrators granted Claimant's motion to dismiss the second cause of action alleged by Claimant in the Statement of Claim and granted Claimant's motion to dismiss that portion of the Statement of Claim which requests damages in excess of \$100,000.00 for intentional infliction of emotional distress.

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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. All claims by Claimant are dismissed.

2. Claimant's motion for sanctions against Respondent in the amount of \$3,500.00 for failure to produce documents in a timely manner is denied.

3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$730.00 hearing session deposit previously deposited by the Claimant. Forum fees are to be split between Claimant and Respondent and are calculated as follows:

One pre-hearing session @ \$300.00	=	\$ 300.00
Four hearing sessions @ \$400.00/session	=	<u>\$1,600.00</u>
Total fees assessed	=	\$1,900.00
Claimant's share (50%)	=	\$ 950.00
Credit for hearing deposit	=	\$ 730.00
Balance due	=	\$ 220.00
Respondent's share (50%)	=	\$ 950.00
Balance due	=	\$ 950.00

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


ARBITRATORS

Name Public / Industry

Aaron J. Fenton, Esq.
Lou von Dyl
Luther Delano Prater

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures



Aaron J. Fenton, Esq.

Lou von Dyl

Luther Delano Prater

Date of Decision: _____

Date Served: 9/11/95