

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Larry Bruce Carr,

Claimant

v.

No. 94-00867

Merrill Lynch, Pierce Fenner &
Smith, Inc., Paul Beebe, Fred Bruce
and Richard Fitzgerald,

Respondents.

REPRESENTATION OF PARTIES

Claimant Larry Bruce Carr was represented by William S. Shepherd, Esq., Sole Practitioner, Houston, TX and by Cecilia A. Welch, Esq., Oklahoma City, OK.

Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Richard Fitzgerald were represented by Bruce Day, Esq. of Day, Edwards, Federman, Propester & Christensen, P.C., Oklahoma City.

CASE INFORMATION

Claimant Larry Bruce Carr filed the Statement of Claim on or about February 28, 1994. Claimant executed a Uniform Submission Agreement on February 16, 1994. Claimant filed a Response to the Respondents' Motion to Dismiss on or about December 16, 1994.

Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Richard Fitzgerald filed a Joint Statement of Answer on or about May 4, 1994. Respondent Richard Fitzgerald executed a Uniform Submission Agreement on May 2, 1994. Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. Submitted a Uniform Submission Agreement executed by Michael J. Stewart, First Vice President, on April 19, 1994. Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Richard Fitzgerald filed a Joint Motion to Dismiss on or about November 9, 1994 and a Reply to the Claimant's Response to the Motion to Dismiss on or about December 23, 1994.

HEARING INFORMATION

An In-Person Pre-hearing Conference was held on January 24, 1995 for one (1) session before three arbitrators in Oklahoma City, OK.

CASE SUMMARY

Claimant Larry Bruce Carr ("Carr") alleged in his Claim that Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch"), Richard Fitzgerald ("Fitzgerald"), Fred Bruce ("Bruce") and Paul Beebe ("Beebe") made unauthorized and unsuitable investments on behalf of the Claimant for his three accounts in which he had deposited a total of approximately \$50,000.00. According to the Claimant, Respondents made misrepresentations and claimed special knowledge and skills which enticed Carr to enter into transactions and agreements at Merrill Lynch such as granting one or more of the Merrill Lynch representatives discretionary authority of trading in the accounts. From 1981 until 1989, the assets in the accounts were allegedly invested in high risk and unsuitable investments including stock options, naked options, OEX options and limited partnerships. As alleged, upon inquiring about trades and losses in the accounts, the representatives at Merrill Lynch assured Claimant that any losses were temporary and could be regained. Claimant alleged that, after suffering further losses, he began to seek help and make inquiries about the funds yet, before he obtained assistance or discovered the problems, he was involved in an automobile accident which left him totally disabled until 1991. Claimant allegedly resumed his investigation in 1992 and discovered Beebe had his CPA license revoked prior to joining Merrill Lynch. Claimant asserted that the Respondents churned his accounts and that their omissions of fact and misrepresentations were fraudulent causing damage to the Claimant. In addition, Claimant alleged that the Respondents made various violations pursuant to the Oklahoma Securities Statutes, the U.S. Securities Exchange Act of 1934, NYSE Rules, the NASD Rules of Fair Practice and the Federal RICO Act.

Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Richard Fitzgerald in their Answer denied all allegations of wrongdoing asserting that the statutes of limitation have run on any claim Claimant might ever have had and that any claim Carr had from the market adjustment of October, 1987 have been settled and satisfied.

RELIEF REQUESTED

Claimant Larry Bruce Carr requested the following award against the Respondents in the amount of \$100,000.00 plus costs, interest and attorneys' fees and , in addition, punitive and treble damages.

Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Richard Fitzgerald requested an award in its favor.

OTHER ISSUES CONSIDERED & DECIDED

The National Association of Securities Dealers, Inc. Arbitration Department was unable to serve the Statement of Claim and Notification of the Arbitration Panel in accordance with Section 25 and 21

of the Code of Arbitration Procedure on Respondents Fred Bruce and Paul Beebe due to insufficient addresses. Claimant was notified by letters dated July 19, 1994 and September 14, 1994 in which the NASD requested Claimant to provide current addresses for Bruce and Beebe.

Claimant filed an Amended Statement of Claim on or about January 5, 1995. The NASD in correspondence dated January 5, 1995 that pursuant to Section 39(b) of the Code of Arbitration Procedure, after a panel has been appointed, no new or different pleading may be filed and that Claimant must file a request to file the Amended Statement of Claim. The NASD received Claimant's Motion to Amend the Statement of Claim on January 11, 1995. The NASD requested the Respondents to respond to the motion by January 26, 1995.

The parties have agreed that the Award in this matter may be executed by 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, oral arguments and the evidence presented at the Pre-hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Richard Fitzgerald's Motion to Dismiss is granted as to all of the Claimant's claims, including those set forth in the pending Amended Statement of Claim.
2. Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below

FORUM FEES

Pursuant to Section 43(c) of the Code, forum fees in the amount of \$250.00 are assessed to the Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc. Forum fees in the amount of \$250.00 are assessed to the Claimant, Larry Bruce Carr.

Pursuant to Section 43(c) of the Code, the NASD waived the non-refundable filing fee of \$150.00 and the hearing session deposit of \$500.00 at the request of the Claimant, Larry Bruce Carr.

Fees should be made payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Name:

John R. Preston, Esq.
John R. Preston, Esq.
Presiding Chair
Public Arbitrator

Edwin E. O'Brien
Edwin E. O'Brien
Public Arbitrator

Robert G. Rader
Robert G. Rader
Industry Arbitrator

Date of Service by the NASD: February 2, 1995