

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Edwin A. Dahle

96-00964

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Samuel Turvey

REPRESENTATION

For Claimant, Edwin Dahle ("Claimant"), appeared Thomas P. Liptock of the law firm Gunnoe & Associates located in Centerville, Ohio.

For Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill Lynch"), and Samuel Turvey ("Turvey"), collectively ("Respondents"), appeared Clarence L. Pozza, Jr., Esq. of the law firm Miller, Canfield, Paddock and Stone, P.L.C. located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on: March 4, 1996.

Claimant's Submission Agreement signed on: January 16, 1996.

Respondents Joint Statement of Answer filed on: May 20, 1996.

Respondents Merrill Lynch and Turvey did not execute Submission Agreements.

HEARING INFORMATION

Hearing Dates/Sessions: October 16, 1996 - 2 Sessions

The hearings were held at the Best Western Hotel in Cincinnati, Ohio.

CASE SUMMARY

Claimant alleged that in December 1985, he asked his account representative at Merrill Lynch, Robert Patterson ("Patterson") about a safe investment for setting aside a sum of money for several years. Claimant further alleged that Patterson recommended purchasing LTV Corp. 5% 1988 debentures, stating that the debentures would mature in two years and provide a good return. Claimant also alleged that upon this recommendation, he purchased 120,000 LTV Corp 5% 1988 debentures at an average price of \$808.33 between December 30, 1985 and January 22, 1986. Claimant asserted that on July 17, 1986 LTV Corp filed for bankruptcy protection under Chapter 11. Claimant further asserted that when he learned of the bankruptcy he contacted Patterson who told him he had nothing to worry about since the debentures were just like money in the bank. Claimant also asserted that, on April 11, 1987, Patterson died.

Claimant contended that in March 1992, he learned that the debentures were subordinate debentures. Claimant further contended that he was lead to believe that they were secure ordinary debentures related to the aero-space or defense operations, and not that they were related to the steel operations.

Claimant also contended that on June 15, 1993 he delivered a letter to Merrill Lynch's Dayton office, complaining about the large losses he suffered and the bad advice he received. Claimant alleged that it took so long to take action against Merrill Lynch because the LTV Corp.'s bankruptcy reorganization took so long, and he did not know what type of loss he would sustain until the bankruptcy was over.

Claimant also alleged that between May 3, 1994 and May 13, 1994 he was hospitalized with prostate cancer and lost all contact with market activity and in particular his SP-500 index futures trading. Claimant asserted that on May 13, 1994, respondent Turvey decided that he should close out his commodity account and that he would only be allowed to liquidate his open positions of 3 Long (September) and 3 Short (June) SP-500 index futures contracts. Claimant further asserted that he objected to Turvey's decision, simply because it was his money and he should have the right to trade and close out his account in a reasonable period of time if it had to be done.

Claimant also asserted that, on June 28, 1994, Turvey decided to sell his remaining 3 Long (September) SP-500 index futures without any regard to his desires. Claimant contended that Respondents claimed that the actions taken were in accordance with the agreement of his commodity account. Claimant further contended that even though his account has been at Merrill Lynch for ten years, he does not recall ever agreeing to have his account sold out without his consent. Claimant also contended that had he been permitted to trade he would have netted an approximate \$20,000.00 profit instead of an approximate \$58,000.00 loss that occurred as a result of Turvey's action.

Respondents maintained that Claimant's LTV Corp claim is barred and ineligible for arbitration pursuant to Section 15 of the NASD Code of Arbitration Procedure. Respondents further maintained that even if Claimant's LTV Corp claim is eligible for arbitration, Claimant can not second guess his LTV debenture investment years after the fact. Respondents also maintained that the LTV investment was appropriate for Claimant.

Respondents contended that Claimant's Key Client Cash Management Account Statement showed the exact position of the LTV debentures, including total cost basis, the estimated market value and unrealized gain or loss. Respondents further contended that Claimant was on clear notice of the LTV's

reorganization and the drop in market value, but chose not to sell. Respondents also contended that all LTV Corp debentures, regardless of whether they were senior or subordinated, felt the impact of the LTV Corp's reorganization. Respondents maintained that an investor cannot attempt to rescind such a transaction years after the fact by complaining that he did not understand the debt was subordinated.

Respondents further maintained that Claimant, on August 8, 1994, executed a Futures Customer Agreement ("Agreement"), which specifically allows Merrill Lynch, in its discretion, to close/sell positions without notice. Respondents also maintained that the contractual provisions set forth in the Agreement granted Merrill Lynch the right to act precisely as it did in liquidating the Claimant's account and refute Claimant's contention to the contrary. Respondents contended that on June 21, 1994, Claimant's doctor wrote that Claimant was medically unable to attend to business affairs and had been shortly before his admission. Respondents further contended that given the losses and Claimant's medical condition, on June 28, 1994, pursuant to the Agreement, Merrill Lynch liquidated the open positions in the Claimant's commodities account. Respondents also contended that given the circumstances their actions were reasonable.

Respondents maintained that Turvey is a Vice President and Senior Counsel in the office of General Counsel of Merrill Lynch in New York. Respondents further maintained that Turvey is not a registered person and was acting as an attorney for Merrill Lynch in this matter.

RELIEF REQUESTED

Claimant Edwin Dahle requested: (1) \$140,155.00 as compensation for the loss he sustained as a result of the LTV situation; (2) \$58,000.00 in compensation for the loss he sustained as a result of liquidating his futures account; (3) \$200,000.00 in punitive damages.

Respondents Merrill Lynch and Turvey requested that the claims of the claimant be dismissed in their entirety, and requested an award of costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing and pursuant to the stipulation of all parties, Respondent Samuel Turvey was dismissed from the case with prejudice and without costs.

The arbitration panel made the following rulings concerning Merrill Lynch who did not file a properly executed Submission Agreement in this matter:

1. Pursuant to Section 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over the entire controversy.
2. The panel found that Merrill Lynch was a member firm of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Merrill Lynch pursuant to 10301 of the Code.
3. In view of (2) above, the panel found that Merrill Lynch was required to file a properly executed Submission Agreement pursuant to Section 10314(b) of the Code.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch be and hereby is liable and shall pay to the Claimant Edwin Dahle the sum of \$25,000.00 in actual damages.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other claims be and hereby are denied.

FORUM FEES


Pursuant to Section 10332 of the NASD Code of Arbitration Procedure, the arbitrators have determined the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by claimant Edwin Dahle, and have assessed the following Forum Fees.

2 Sessions X \$750.00	=	\$1,500
minus Hearing deposit \$750.00	=	<u>\$750.00</u>
Total outstanding	=	\$750.00


Claimant be and hereby is liable and shall pay to the NASD the sum of \$750.00 representing the one half of forum fees assessed. The Claimant has previously deposited \$750.00 with the NASD. Therefore, Claimant owes nothing.

Respondent be and hereby is liable and shall pay to the NASD \$750.00 representing one half of forum fees assessed.

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

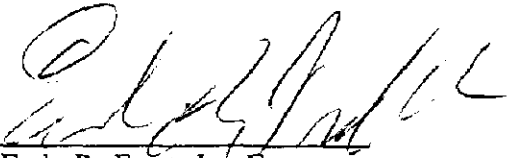

John A. Whalen

I, John A. Whalen, do hereby affirm that this is my decision in the above captioned matter.


John A. Whalen


Date of Decision: December 3, 1996

ARBITRATORS' SIGNATURES




Earle R. Frost, Jr., Esq.

I, Earle R. Frost, Jr., do hereby affirm that this is my decision in the above captioned matter.



Earle R. Frost, Jr.

Date of Decision: December 3, 1996


William W. Oliver

I, William W. Oliver, do hereby affirm that this is my decision in the above captioned matter.


William W. Oliver

Date of Decision: December 3, 1996