

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

L.H. Carpenter & Carol C. Hipp

96-02698

Name of Respondents

Edward D. Jones & Co.
Christopher Palladino

REPRESENTATION

Claimants L.H. Carpenter ("Carpenter") and Carol C. Hipp ("Hipp") were represented by William L. Mills, III, Esq., The Mills Law Firm, Concord, NC.

Respondents Edward D. Jones & Co. ("Jones & Co.") and Christopher Palladino ("Palladino") were represented by Cynthia McNeely, Esq. and Lee A. Spinks, Esq., Poyner & Spruill, Charlotte, NC.

CASE INFORMATION

The Statement of Claim by Carpenter and Hipp (collectively "Claimants") was filed June 24, 1996.

Claimants' Amended Statement of Claim was filed August 30, 1996.

Carpenter's Uniform Submission Agreement was signed June 17, 1996.

Hipp's Uniform Submission Agreement was signed May 28, 1996.

The Joint Statement of Answer of Jones & Co. And Palladino (collectively "Respondents") was filed August 2, 1996.

Jones & Co.'s Uniform Submission Agreement was signed July 5, 1996.

Palladino's Uniform Submission Agreement was signed August 1, 1996.

HEARING INFORMATION

Hearing Date/Sessions: February 24, 1997/two sessions

Hearing Location: Sheraton Hotel
Charlotte, NC

CASE SUMMARY

Claimants, Carpenter and Hipp, hold a joint account with Respondent Jones & Co. Claimant Carpenter is a seventy-six (76) year old individual who completed the sixth grade. Carpenter worked for Cannon Mills, Inc. for nearly forty-four years and retired as a foreman in the dry finishing department.

Carpenter interacted with Respondents on the joint account. Claimants alleged that Respondents failed to disclose to Carpenter the terms and conditions of the account agreement opened in February 1992. Claimants alleged that Carpenter was an unsophisticated investor and Respondents took advantage of the situation. Claimants alleged that Respondents failed to disclose the nature of the research and analysis behind the recommendations made to Carpenter. Claimants alleged that Respondents failed to assess Carpenter's financial condition and thus recommended unsuitable securities. In addition, Claimants alleged that Respondents recommended that Claimant invest in tax-free money market funds and to purchase tax-free bonds, both of which were unsuitable given Carpenter's tax status. Claimants alleged that Respondents made investments on margin even when Claimants had sufficient cash available to cover the transactions. Claimants alleged that Respondents engaged in discretionary trading in Claimants' account even though Respondents had informed Carpenter that they would be authorizing all transactions. Claimants alleged that the confirmation slips were marked "unsolicited". Claimants alleged that Carpenter, with only a sixth grade education and virtually no experience in the stock market, would not have the knowledge or understanding to suggest purchases of such companies as Foxmeyer Corporation, Henry Jack & Associates, Ross Cosmetics, and United Wisconsin Services, Inc. Claimants alleged that while Carpenter may have suggested purchasing shares of Food Lion, Inc., as he had purchased some Food Lion shares before coming to Jones & Co., Carpenter did not suggest nor authorize the additional transactions. Claimants alleged that Jones & Co. improperly supervised Palladino in the management of Claimants' account. In addition, Claimants alleged that Jones & Co. knew or should have known of Palladino's misconduct, as the North Carolina Secretary of State's Office had been involved in other customer complaints against Palladino.

Claimants alleged that Carpenter informed Respondents to sell all the shares in Checkers Drive-In and Food Lion, Inc. Class A stock on February 16, 1996. Claimants alleged that Respondents sold the Checkers Drive-In shares pursuant to a market order but held the Food Lion, Inc. as a sell-limit order, even though they had Carpenter's written instructions to the contrary. Claimants alleged that Carpenter's instructions, both written and verbal, were simply to sell Food Lion and were not given as a sell-limit order. Claimants alleged that Respondents increased their commissions by changing Claimant's instructions in this manner.

Claimants alleged that Respondents breached their fiduciary duty to Claimants through a series of misrepresentations and omissions of material facts, which Claimants relied upon. Claimants alleged that Respondents mismanaged Claimants' account through the use of margin without Claimant's specific informed consent. In addition, Claimants alleged that Respondents engaged in unauthorized trading in Claimants' account by executing trades as if the account were a discretionary account. Claimants alleged that Respondents' activities constituted constructive as well as actual fraud. Claimants alleged that Respondents' behavior resulted in losses to Claimants' account for which Respondents should be liable.

Respondents emphatically denied all allegations of wrong-doing as asserted in the Statement of Claim and the Amended Statement of Claim. Respondents maintained that Claimants provided a large amount of information concerning their financial and personal background, which Respondents took into consideration when opening the account. Respondents maintained that Claimants were informed as to all aspects of investing prior to conducting any transactions. Respondents maintained that Claimants stated their understanding of the investment arena and specifically expressed a desire to consider opportunities for investments which provided tax free income, and investments what while having a greater degree of risk provided potentially greater returns.

Respondents maintained that Claimants were fully informed about the terms and conditions of the margin account, the manner in which such an account operated, and the consequences of trading on margin.

Respondents maintained that Claimants signed the form indicating that they understood the terms and conditions of opening the account, including the margin account. Respondents also maintained that all transactions, executed in Claimants' account, were fully discussed with Carpenter and authorized. Respondents denied that Palladino ever engaged in discretionary trading in Claimants' account. Respondents maintained that Palladino was always supervised appropriately and that there was no mismanagement of Claimants' account. Respondents also raised the affirmative defenses of a failure to state a claim upon which relief may be granted; that the claims are barred by the applicable statute of limitations; a failure to mitigate damages; and an assumption of risk. Respondents maintained that at all times Respondents complied with the NASD Rules of Fair Practice.

RELIEF REQUESTED

Claimants requested relief in the amount of \$19,905.40, pre-award interest as well as the costs of this arbitration, attorney's fees and punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs of the arbitration, including reasonable attorney's fees, be assessed to Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents are jointly and severally liable to and shall pay to Claimant L.H. Carpenter the sum of \$20,000.00 inclusive of interest.
2. That Respondents are jointly and severally liable to and shall pay to Claimants the sum of \$6,000.00 in attorney's fees.
3. That the claim for punitive damages is denied.
4. That each party shall bear its own costs and expenses with the exception of the Claimant's attorney's fees as specified above and the forum fees specified below.
5. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

2 sessions x \$300.00 = \$600.00

Forum Fees are assessed at fifty percent to Claimants and fifty percent to Respondents, jointly and severally. Claimants are to get credit for the \$300.00 hearing session deposit previously submitted to the NASD Regulation leaving no further assessment due from Claimants. Respondents have a net assessment of \$300.00.

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

DATE

ARBITRATOR'S SIGNATURE

3/18/97

Stanley V. Lewis

Stanley V. Lewis
Public Arbitrator

Date Decision Served by NASD Regulation:

March 21, 1997