

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Roger P. and Judith A. Anderson

96-04235

Name of Respondents

Ferris Baker Watts & Company, Incorporated
Gary Richman
Jerald Lewis

REPRESENTATION

Claimants Roger P. and Judith A. Anderson ("Claimants") were represented by D. Christopher Ohly, Esq., Patton Boggs, Baltimore, MD.

Respondents Ferris, Baker Watts & Company, Inc. ("FBW"), Gary Richman ("Richman") and Jerald Lewis ("Lewis") were represented by Theodore W. Urban, Esq., Ferris, Baker Watts, Inc., Washington, D.C.

CASE INFORMATION

The Statement of Claim was filed September 23, 1996.

Claimants' Uniform Submission Agreement was signed September 20, 1996.

The Joint Statement of Answer of Respondents FBW, Richman and Lewis (collectively "Respondents") was filed November 7, 1996.

FBW's Uniform Submission Agreement was signed November 8, 1996.

Richman's Uniform Submission Agreement was signed November 13, 1996.

Lewis' Uniform Submission Agreement was signed December 2, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: June 16, 1997/two sessions
 June 17, 1997/two sessions
 July 8, 1997/two sessions
 July 9, 1997/two sessions
 July 11, 1997/two sessions

Hearing Location: Doubletree Hotel
 Baltimore, MD

CASE SUMMARY

Claimants alleged, among other things, that Respondents knowingly and with reckless disregard, induced Claimants to authorize discretionary authority to Richman and Lewis which resulted in excessive trading of unsuitable securities through the use of misrepresentations and fraudulent omissions of material facts in violation of Section 10(b) of the Securities Exchange Act, and Rule 10(b)-5 thereunder, said acts constituting a violation of federal and state securities laws and the rules and regulations of the NASD. Claimants alleged that they contacted Richman in September 1994 upon the advice of a friend. Claimants alleged that Respondents were fully informed about Claimants' financial, employment and investment background and were also informed that Claimants would be totally dependent upon income from investments when Mr. Anderson retired in two or three years. However, Claimants alleged that Respondents never inquired about Claimants' investment objective, their risk tolerance, their knowledge and understanding of the stock market, their understanding about trading "short" positions and the use of a margin account.

Claimants alleged that soon after opening their account with FBW, they transferred in various securities having an approximate aggregate value of \$82,831.00. Claimants alleged they relied completely upon the investment advice of Respondents based on Respondents' misrepresentations about the success of their customers' accounts. Claimants alleged that shortly after the securities were transferred into the account, Respondents began trading heavily in Claimants' account, trading in both "short" and "long" positions, but without the advice, consent, input, authorization or prior approval of Claimants. Claimants alleged that, as had been discussed with Claimants at their initial meeting, and upon oral but no written consent, Respondents exercised complete and unfettered discretion and control over Claimants' account. Claimants alleged that Respondents requested written authorization of discretionary authority in June 1995 after Respondents had been exercising discretionary authority over Claimants' account for nine months, and Claimants granted discretionary authority at that time. Claimants alleged that they did not understand how "short" sales and trading on margin were affecting their account and when they requested confirmation of the \$160,000.00 balance in their account in February 1995, Respondents confirmed that amount when in fact the balance was \$66,990.00. In other words, Claimants alleged that they had suffered nearly a twenty percent decrease in value but were being told something very different. Claimants alleged that when they would receive margin calls, demanding immediate payment to satisfy margin requirements, Respondents would inform them to ignore the notices, that such notices were computer errors or "glitches". Finally in January 1996, Claimants asserted that after Respondents dodged the question for sixteen months, providing half-truths and misrepresenting the status of Claimants' account, Respondents admitted that if Claimants were to liquidate their account right then, it would have a value of approximately \$67,000.00 to \$70,000.00. Claimants requested an audit by FBW personnel and after that was completed the value of Claimants' account was \$60,000.00.

Claimants alleged that Respondents actions breached their contract as well as their fiduciary duty to Claimants and violated Rule 2310-2 of the NASD Rules of Conduct. Claimants also alleged that Respondents' actions constituted securities fraud and common law fraud through their use of misrepresentations and omissions of material facts as to the suitability of the transactions. Claimants further asserted that FBW failed to adequately supervise Richman and Lewis in the management of their account.

Respondents denied the allegations of wrong-doing as asserted in Claimants' Statement of Claim. Respondents maintained that contrary to the allegations, Respondents began the process of learning Claimants' investment objectives before they even met with Claimants the first time. Respondents

contended that Claimants were extensively questioned concerning their investment objectives, their overall financial position and outlook and their expectations for investment return in relation to their risk tolerance. Respondents maintained that the outcome of their meeting with Respondents was to entrust a small portion of their assets with Respondents for the purpose of pursuing a trading strategy which had been extremely successful for Richman in recent years for the more aggressive portion of their portfolio. Respondents further maintained that at no time did Respondents tell the Claimants that this trading strategy was conservative, could assure any minimal return or did not involve a risk of loss. Respondents did not dispute that Claimants chose to invest certain assets in a conservative manner for retirement, but those assets were never entrusted to Respondents. Respondents asserted that they dealt only with those limited assets which Claimants identified as available for a more aggressive investment approach, among those securities were Cavalier Homes, Hechinger, Genentech, J2 Communications and Van Eck Gold Resources Fund, and which clearly had been managed in an aggressive manner in the past.

Respondents maintained that the \$82,831.00 in securities which Claimants transferred to FBW represented less than 8% of the assets disclosed by Claimants as constituting the capital assets upon which Claimants would rely to fund their retirement. Respondents further maintained that to the extent that the account was subject to excess turnover, a significant portion of those transactions were the result of mutual determination of Respondents and Claimants that the portfolio needed a complete revamping. Respondents contended that they did not initially have discretion on the account and discussed each transaction with one or both Claimants before executing the transaction. Respondents maintained that securities were bought or sold only with the prior knowledge and consent of one or both Claimants and discretion was extended only as to price and time of execution, as permitted by the rules and regulations. Respondents asserted that Claimants are reasonably sophisticated, knowledgeable individuals and it is inescapable that they knew they were authorizing short transactions and the use of margin in their account. In addition, Respondents maintained that Claimants received monthly account statements as well as transaction confirmations and that there was never any attempt or intent to deceive Claimants as to activity and value of their account.

Respondents raised the affirmative defenses of estoppel, ratification, assumption of risk and a failure to mitigate. Respondents maintained that any loss suffered by Claimants was the result of Claimant's own decisions and the fluctuations of the market.

RELIEF REQUESTED

Claimants requested damages in the amount of \$166,806.85; punitive damages in the amount of \$300,000.00; pre-award interest; and the costs and expenses of this arbitration.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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. Respondents Ferris, Baker Watts & Co., Inc., Gary Richman and Jerald Lewis, are jointly and severally liable to and shall pay to Claimants \$41,179.18.
2. The request for punitive damages is denied.
3. Each party shall pay its own costs and expenses, including attorney's fees.
4. Any and all other relief not specifically addressed herein is denied.

FORUM FEES

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

10 sessions x \$750.00 = \$7,500.00

Forum Fees are assessed to at \$3,750.00 to Claimants and \$3,750.00 to Respondents Ferris, Baker Watts & Co., Inc., Gary Richman and Jerald Lewis, jointly and severally. Claimants are to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$3,000.00. Respondents Ferris, Baker Watts & Co., Inc., Gary Richman and Jerald Lewis have a net assessment due for Forum Fees of \$3,750.00.

Pursuant to Rule 10333, Respondent Ferris, Baker Watts, Inc. is assessed a member surcharge of \$350.00. Respondent Ferris, Baker Watts, Inc. is to receive credit for the \$350.00 surcharge deposited with the NASD Regulation, leaving no further member surcharge due.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

July 18, 1997



Sandra Lee Dolan, Presiding
Public Arbitrator

Marshall Passman
Public Arbitrator

W. Thomas Gehrt
Industry Arbitrator

Date Decision Served by NASD Regulation:

July 24, 1997

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:

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7/16/97

Sandra Lee Dolan, Presiding
Public Arbitrator

Marshall Passman
Public Arbitrator

W. Thomas Gehrt
Industry Arbitrator

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