

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. LANDSBERG, COORDINATED
CAPITAL SECURITIES, INC. and ANTHONY J.
AMARADIO,

UNPUBLISHED
November 21, 1997

Plaintiffs-Appellees,

v

No. 199788
Oakland Circuit Court
LC No. 95-492567-CK

THOMAS F. BEATTIE, BARBARA M. BEATTIE,
ANTHONY GUSMANO, as Trustee for the Tenibac-
Graphion, Inc. Employee Profit Sharing Plan, LESLIE
E. ILEY, AUDREY M. ILEY, IRENE K. KOKUBA,
LORRAINE A. KORAL, SANDRA L. LEAHY,
RODNEY LEE MICK, CORLISS L. MICK,
ELDON WATERLOO, JR., JOYCE WATERLOO,
WAYNE E. WILLIAMS, and KATHY A.
WILLIAMS,

Defendants-Appellants.

Before: Saad, P.J., and O'Connell and Matuzak,* JJ.

PER CURIAM.

Defendants appeal the circuit court's order granting plaintiffs' motions for summary disposition and permanent injunctive relief. We affirm.

Defendants purchased bonds from plaintiffs, who were brokers and members of the National Association of Securities Dealers (NASD). After these bonds proved worthless, defendants sought to arbitrate their claims against plaintiffs before the NASD. In response, plaintiffs sought injunctive relief before the circuit court to bar defendants from bringing their claims to arbitration. Plaintiffs argued that the claims were not eligible for arbitration because they were untimely under Section 15 of the NASD Code. The circuit court agreed with plaintiffs, and permanently enjoined defendants from arbitrating their claims before the NASD.

* Circuit judge, sitting on the Court of Appeals by assignment.

I.

In their brief on appeal, defendants argue that 15 USC 78aa gives the Federal courts exclusive jurisdiction over this dispute. However, during oral argument defense counsel conceded that the circuit court had jurisdiction over the subject matter. The Federal Sixth Circuit Court of Appeals has held that breach of NASD rules, including NASD Code §15, does not give rise to federal question jurisdiction. *City of Detroit Pension Fund v Prudential Securities, Inc*, 91 F3d 26, 29 (CA 6, 1996), *cert den* ___ US ___; 117 S Ct 1252; 137 L Ed 2d 333 (1997); *Ford v Hamilton Investments, Inc*, 29 F3d 255, 259 (CA 6, 1994). The Federal courts do not have subject matter jurisdiction over the issue, let alone exclusive jurisdiction.

II.

Defendants argue that the NASD rather than the circuit court should have decided whether defendants' claims for arbitration were timely under NASD §15. We disagree. NASD §15 operates as a substantive eligibility requirement which bars from arbitration claims submitted more than 6 years after the event or occurrence which gave rise to those claims. *Edward D. Jones & Co v Sorrells*, 957 F2d 509, 512 (CA 7, 1992). Whether a dispute is eligible for arbitration under NASD §15 is a question for the courts to decide. *Merrill, Lynch, Pierce, Fenner & Smith v Cohen*, 62 F3d 381, 383-384 (CA 11, 1995); *Dean Witter Reynolds Inc v McCoy*, 995 F2d 649, 650-651 (CA 6, 1993); *Edward D. Jones & Co, supra*.

III.

Defendants argue that the trial judge erred by calculating the §15 period from the date they purchased the bonds instead of the date they discovered their losses. We disagree. Section 15 of the NASD Code is not a statute of limitations subject to equitable tolling provisions, but rather is a contractual eligibility provision that cannot be tolled, except when a case is directed to arbitration by a court of competent jurisdiction. *Chubb Securities v Manning*, 224 Mich App 702, 709; ___ NW2d ___ (1997). The federal courts have also recognized that §15 is a substantive eligibility requirement which bars the NASD's arbitration of claims "where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim, or controversy." *Edward D. Jones & Co, supra*, 957 F2d 511-513. The express language of §15 states that its operation begins to run at the time of the occurrence or event which gave rise to the dispute, rather than the time at which any claim accrues.¹ In *Chubb Securities*, this Court concluded that "the six-year eligibility period of §15 began to run at the time the investment purchases were made, rather than, as argued by defendant, when the defendant decided that the purchases were no longer in her best interest." 224 Mich App at 708.

IV.

Finally, defendants argue that the trial court erred by failing to order the parties to proceed to arbitration before the NASD. In support of this argument defendants point to language in the NASD rules and *Edward D. Jones & Co, supra*, which state that the §15 bar is removed where the parties have submitted the dispute to a court of competent jurisdiction and that court orders

that the claims be arbitrated before the NASD. NASD Code §18; 957 F2d 513. In *Chubb Securities, supra*, this Court recognized that the §15 period can be tolled where the claim was first brought before a court of competent jurisdiction. 224 Mich App 706, 709. Here defendants never filed their claims with a court, but instead submitted their claims to the NASD for arbitration. Thus the exception does not apply. *Edward D. Jones & Co*, 957 F2d 513-514.

Affirmed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak

¹ Some Federal courts have recognized that it is not a foregone conclusion that the purchase date is the occurrence or event which gave rise to the claims; the claims could arise from subsequent fraudulent acts. *Cohen, supra*, 62 F3d 385; *McCoy, supra*, 995 F2d 651. However, defendants did not raise this argument or allege any such acts on appeal.