

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Dorothee A. Roten and
Michelle M. Roten

Case Number: 04-06328

Name of the Respondents

Lehman Brothers Inc.;
Sanders Morris Harris, Inc.; and,
Anthony Benson Hall

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customers vs. Member Firms and Associated Person

REPRESENTATION OF PARTIES

Claimants Dorothee A. Roten ("D. Roten") and Michelle M. Roten ("M. Roten"), hereinafter collectively referred to as "Claimants": Nicholas P. Iavarone of Simmons Cooper LLC, located in East Alton, Illinois.

Respondent Lehman Brothers Inc., hereinafter referred to as "Lehman": C. W. Flynn, Esq., of the firm of Locke Liddell & Sapp LLP, located in Dallas, Texas.

Respondent Sanders Morris Harris, Inc., hereinafter referred to as "SMH": Jack D. Ballard, Esq., located The Ballard Law Firm, located in Houston, Texas.

Respondent Anthony Benson Hall, hereinafter referred to as "Hall": Timothy P. Chastain, Esq., of the firm of Carrington Coleman Sloman & Blumenthal, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: September 3, 2004.

Both Claimants signed the Uniform Submission Agreement: August 26, 2006.

Claimants' Response to the Motion to Consolidate filed: June 6, 2005.

Notice of Dismissal of Respondent Lehman Brothers Inc. filed on: January 23, 2006.

Claimants' Pre-Hearing Memorandum filed on: January 23, 2006.

Claimants' Memorandum in Response to the Panel's Query filed on: May 15, 2006.

Claimants' Motion for Reconsideration of Attorneys' Fees filed on: May 24, 2006.

Statement of Answer filed by Respondent Lehman on: November 15, 2004.

Respondent Lehman signed the Uniform Submission Agreement: November 9, 2004.

Statement of Answer filed by Respondent SMH on: January 12, 2005.

Respondent SMH signed the Uniform Submission Agreement: November 16, 2004.

Respondent SMH's Motion to Consolidate filed on: May 24, 2005.

Respondent SMH's Pre-Hearing Brief filed on: February 6, 2006.

Respondent SMH's Brief on Legal Issue filed on: May 15, 2004.

Statement of Answer filed by Respondent Hall on: October 26, 2004.

Amended Statement of Answer filed by Respondent Hall on: January 21, 2005.

Respondent Hall signed the Uniform Submission Agreement: October 26, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Texas Deceptive Trade Practices-Consumer Fraud Act ("DTPA"); breach of fiduciary duty; breach of contract; violation of the Securities Exchange Act; violation of the Texas Securities Act; and, negligence. These causes of action related to Respondents' recommendations and transactions taken in Claimants' accounts, including excessive trading, the purchase of unsuitable high risk stocks and mutual funds, excessive margin purchases, and option trading.

Unless specifically admitted in its Answer, Respondent Lehman denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimants are barred from recovery because they authorized, approved of, and/or ratified all transactions complained of in the Claim;
3. Claimants' losses were proximately caused by intervening events in the market place and/or the acts and omissions of third parties, rather than any alleged wrongdoing on the part of Respondent;
4. Claimants through their own conduct are barred from recovery on the grounds of contributory fault or negligence, or a failure to exercise due care;
5. Claimants have failed to mitigate their losses;
6. Claimants' claims, in whole or in part, are untimely and barred by contract, laches, and/or applicable statutes of limitations;
7. Claimants' claims are barred, in whole or in part, by the doctrines of waiver and/or estoppel;
8. Claimants' claims under the DTPA are barred because the DTPA does not apply in this case;
9. Claimants' breach of fiduciary duty claims are barred because the Respondent was not in a fiduciary relationship with the Claimants;
10. Respondent did not breach any contract, fiduciary duty, or any other legal duty to the Claimants;

11. Respondent at all times acted in good faith, and it relied in good faith on Claimants' oral and written representations;
12. Claimants are not entitled to recover damages for emotional distress under applicable law; and,
13. Claimants are not entitled to recover exemplary damages or attorneys' fees from Respondent under applicable law.

Unless specifically admitted in its Answer, Respondent SMH denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants' damages, if any, were the result of market forces and Claimants' own actions for which SMH is not responsible;
2. Claimants knew and willingly assumed the risks associated with the transactions at the time the transactions were made and are estopped from complaining of the transactions;
3. Claimants failed to timely complain of the transactions and SMH reasonably relied upon Claimants' conduct to its detriment;
4. Claimants ratified the transactions, and/or waived their right to complain of them by their own conduct;
5. Claimants failed to mitigate their damages by not bringing their complaints to the attention of SMH in a timely fashion;
6. SMH is not the producing cause of any damages under the DTPA;
7. SMH has not violated the federal and state securities statutes, and all SMH's actions were undertaken in good faith and were consistent with the Claimants' expressed investment objectives;
8. SMH is not the proximate cause of any damages to Claimants as a result of fraud, negligent misrepresentation or any other misconduct on their part;
9. SMH is not the cause of lost assets, lost opportunities, consequential losses and/or further injury to Claimants; and,
10. Any award of punitive damages would constitute a violation of the due process, equal protection, and excessive fines clauses of the United States and Texas Constitutions.

Unless specifically admitted in his Answer, Respondent Hall denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants' claims under the DTPA are barred because the DTPA does not apply to this action;
2. Hall did not breach any fiduciary duties he may have owed to Claimants;
3. Hall did not violate any federal or state securities laws, and at all times acted in good faith and relied in good faith on Claimants' oral and written representations;
4. Hall was not negligent in handling Claimants' accounts, and did not act knowingly or recklessly. Hall properly followed Claimants' instructions and invested their money as directed;

5. Claimants are not entitled to recover punitive damages, and any recovery of punitive damages would violate the U.S. and Texas Constitutions. In addition, any recovery of punitive damages is limited by the Texas Civil Practice & Remedies Code § 41.008 (Vernon Supp. 2003);
6. Claimants are not entitled to recover attorneys' fees, costs or interest from Hall under applicable law;
7. Claimants fail to state a claim upon which relief can be granted;
8. Any of the damages alleged by Claimants were the result of market forces, Claimants' own actions, or the acts or omissions of third parties;
9. Claimants are barred from recovering, in whole or in part, by the applicable statutes of limitations and/or laches;
10. Claimants are barred from recovering on their claims because they authorized, approved of, and ratified all transactions complained of in the Statement of Claim;
11. Claimants are barred from recovering on their claims based on the doctrines of estoppel and waiver; and,
12. Claimants failed to take reasonable steps to mitigate their damages, if any.

RELIEF REQUESTED

Claimants requested the following damages from Respondents Lehman and Hall:

Compensatory Damages (D. Roten)	\$ 699,536.00
Compensatory Damages (M. Roten)	\$ 218,519.00
Emotional Distress Damages	\$ 3,000,000.00 each claimant
Treble Damages per DTPA (D. Roten)	\$11,098,608.00
Treble Damages per DTPA (M. Roten)	\$ 9,655,557.00

Claimants requested the following damages from Respondents SMH and Hall:

Compensatory Damages (D. Roten)	\$ 694,622.00
Compensatory Damages (M. Roten)	\$ 546,726.00
Emotional Distress Damages	\$ 3,000,000.00 each claimant
Treble Damages per DTPA (D. Roten)	\$11,083,866.00
Treble Damages per DTPA (M. Roten)	\$10,640,178.00

In addition, Claimants requested pre-judgment interest and reasonable attorneys' fees from all Respondents.

Respondent Lehman requested that the claims be denied in their entirety.

Respondent SMH requested that the Statement of Claim be dismissed, that the complaint be removed from the CRD records of Hall, that the Panel award SMH its reasonable attorneys' fees and costs, that forum fees be assessed against Claimants, and that the Panel award SMH such further relief as the Panel deems just and proper.

Respondent hall requested that the Statement of Claim be dismissed, that the complaint be removed from his CRD records, that the Panel award him his reasonable attorneys' fees and costs, that forum fees be assessed against Claimants, and that the Panel award him such further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On July 13, 2005, the Panel denied Respondent SMH's Motion to Consolidate.

On January 23, 2006, the Claimants dismissed Respondent Lehman Brothers Inc. from this case, with prejudice.

At the close on Claimants' case on February 17, 2006, Respondent SMH presented a Motion for Directed Verdict. The Panel partially granted this Motion and denied Claimants' request for attorneys' fees and costs. On May 24, 2006, Claimants filed a Motion for Reconsideration. Upon review, the Panel has partially granted this Motion.

At hearing, Respondent Hall and Claimants reached a settlement of the claims presented against Hall. Pursuant to the settlement, the Panel takes no further action regarding the claims against Respondent Anthony Benson Hall.

AWARD

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

1. Respondent Sanders Morris Harris, Inc. is liable for and shall pay to the Claimant, Dorothye A. Roten, the sum of \$185,320.00 as compensatory damages;
2. In addition, Respondent Sanders Morris Harris, Inc. is liable for and shall pay to the Claimant, Michelle M. Roten, the sum of \$215,711.00 as compensatory damages;
3. Furthermore, Respondent Sanders Morris Harris, Inc. is liable for and shall pay to the Claimants, Dorothye A. Roten and Michelle M. Roten, the sum of \$97,800.00 as costs and expenses;
4. The claims against Respondent Lehman Brothers Inc. are dismissed with prejudice;
5. All additional costs of arbitration, including any attorneys' fees, shall be borne by the party incurring the cost; and,
6. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Lehman Brothers Inc. and Sanders Morris Harris, Inc. are parties to this arbitration and each were assessed the following member fees:

Member surcharge = \$ 3,750.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00
Pre-hearing conference: March 30, 2005 1 session
Twenty Nine (29) Hearing sessions @ \$1,200.00 = \$34,800.00

Hearing Dates:

February 6, 2006	3 sessions
February 7, 2006	2 sessions
February 8, 2006	2 sessions
February 9, 2006	3 sessions
February 10, 2006	2 sessions
February 13, 2006	2 sessions
February 14, 2006	2 sessions
February 15, 2006	2 sessions
February 16, 2006	3 sessions
February 17, 2006	2 sessions
May 30, 2006	2 sessions
May 31, 2006	2 sessions
June 1, 2006	2 sessions

Total Forum Fees = \$36,000.00

The Panel has assessed \$36,000.00 of the forum fees to Respondent Sanders Morris Harris, Inc.

FEE SUMMARY

Claimants Dorothee A. Roten and Michelle M. Roten are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Less payments</u>	<u>= \$ 2,181.25</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1,581.25

Respondent Lehman Brothers Inc. is solely liable for:

Member Fees	= \$10,000.00
<u>Less payments</u>	<u>= \$10,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Sanders Morris Harris, Inc. is solely liable for:

Member Fees	= \$10,000.00
<u>Forum Fees</u>	<u>= \$36,000.00</u>
Total Fees	= \$46,000.00
<u>Less payments</u>	<u>= \$10,131.25</u>
Balance Due NASD Dispute Resolution	= \$35,868.75

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Dineo Coleman Gary - Public Arbitrator, Presiding Chairperson
Russell E. Rains, Esq. - Public Arbitrator
Raul Antonio Canez, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Dineo Coleman Gary
Public Arbitrator, Presiding Chairperson

Signature Date

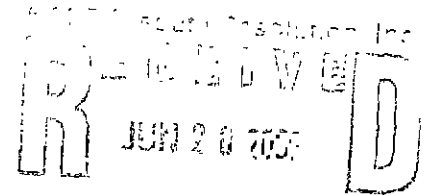
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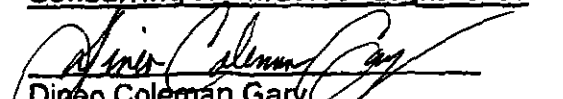
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NASD Dispute Resolution
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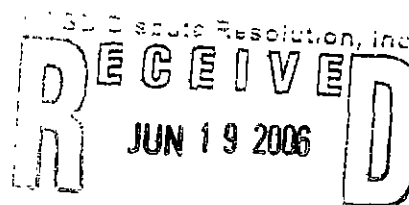

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