

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In The Matter Of The Arbitration Between)	
Weems R. Pennington, Jr., M.D., et al.,)	
Claimants,)	AWARD
vs.)	#87-00970
Bear Stearns & Co., Inc.,)	
Shearson Lehman/American Express, Inc.,)	
Harry Henzel,)	
Respondents.)	

Case Summary

This proceeding was commenced initially on March 16, 1987 by Claimants Weems R. Pennington, Jr., M.D. ("Dr. Pennington"), Harper, Harper & Pennington, P.C. and by Dr. Pennington, as owner of the Money Purchase Pension Plan ("the Pension Plan") and the Profit Sharing Plan against Respondents Bear Stearns & Co., Inc. ("Bear Stearns"), Shearson Lehman/American Express, Inc. ("Shearson"), Harry Henzel ("Henzel") and Rooney Pace, Inc. ("Rooney Pace") and arises out of certain accounts held by Claimants from July, 1981, through October, 1988. Claimants assert that Respondents are liable for certain losses incurred in these accounts while Henzel was employed at Bear Stearns, Shearson and Rooney Pace. Specifically, Claimants allege that Henzel breached his fiduciary duty to Claimants by recommending the purchase and sale of speculative issues, by failing to diversify the stocks in Claimants' accounts, and by manipulating the commission rates of stocks purchased by Claimants.

Claimants assert state law claims for breach of fiduciary duty, negligence and breach of contract arising out of the accounts and allege violations of the Employee Retirement Income Security Act ("ERISA") with respect to the Pension and Profit Sharing accounts.

Respondents deny any breach of duty and liability owed to Claimants with respect to the accounts. Respondents essentially contend that Dr. Pennington understood investment matters and was aware of the risks inherent in stock and margin trading. In addition, Respondents assert that Dr. Pennington was involved in the trading decisions concerning the accounts and directed and authorized each purchase and sale transaction.

Further, with respect to the Pension and Profit Sharing Plans, Respondents deny violations of ERISA and also contend that the actions brought by Claimants are precluded by the applicable statutes of limitations.

Shearson additionally asserts a counterclaim against Dr. Pennington arising out of a debit balance remaining in his Shearson account.

Relief Requested

Claimants request compensatory damages under ERISA for losses in the Pension and the Profit Sharing Plans, compensatory and punitive damages under common law claims, together with costs, interest and attorney's fees.

Bear Stearns, Shearson and Henzel request a dismissal of all claims. Shearson also requests judgment on its counterclaim in the amount of \$44,549.21, plus interest.

Award


On December 1, 1988, June 7, 8, 9, August 24, 25, 26 and September 7, 1989 in Atlanta, Georgia, the undersigned arbitrators heard the controversy between the parties as set forth in the submission to arbitration signed by the parties hereto. Rooney Pace previously filed for bankruptcy and did not appear at the hearing. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

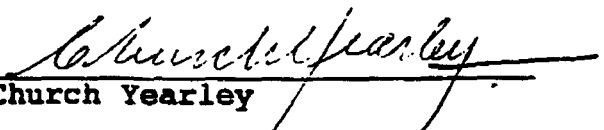
1. All claims of Claimants against Respondents shall be denied in their entirety.

2. Dr. Pennington shall be liable to and shall pay to Shearson on its counterclaim the sum of \$56,711.15, including interest at 7% from the due date of the loss to the date herein.
3. The parties shall each bear their respective costs including attorney's fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by Claimants. In addition, Claimants shall be assessed \$2,812.50 in forum fees and Bear Stearns, Shearson and Henzel shall each be assessed \$3,562.50 in forum fees for the hearing sessions conducted in this matter.

This 28th day of September, 1989.


Frank A. Lightmas Jr.


Joel Arogeti


Church Yearley

[Signatures continued on following page]

Don M. Bieger
Don M. Bieger

George E. Coleman
George E. Coleman