

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Xiomara Ordonez & Pedro Minoz)

87-01738

Name of Respondent(s))

Shearson Lehman Brothers, Inc.)
Valdemar Strasdas)
Alfred Fasulo)

Name of Claimant(s))

Francisco & Margarita Afandor)

88-00097

Name of Respondent(s))

Shearson Lehman Brothers, Inc.)
Valdemar Strasdas)
Alfred Fasulo)

Heard before the members of the Arbitration Panel:

Marina Shank-Klein, Esq.

Perry N. Miller

Myron Dunay, Esq.

These claims were filed with the NASD, Inc. on September 14, 1987 and January 12, 1988. The hearing was conducted in Fort Lauderdale, Florida on January 4 and January 5, 1990 and September 4 and September 5, 1990, with a total of eight (8) sessions.

CASE SUMMARY

Claimants, Xiomara Ordonez ("Ordonez"), Pedro Minoz ("Minoz"), and Francisco and Margarita Afandor ("the Afandor's"), alleged that Respondents Shearson Lehman Brothers, Inc. n/k/a Shearson Lehman Hutton, Inc. ("Shearson"), Voldemar Strasdas ("Strasdas"), and Alfred Fasulo ("Fasulo"), were liable for: placing Claimants in unsuitable investments; breach of contract; fraud; misrepresentation; churning; unauthorized trades; and breach of fiduciary duty by inducing Claimants into purchasing options. Additionally, Claimants alleged that Shearson was liable for negligence and failure to supervise.

Respondents alleged that the Claimants were: suitable for the investments; informed of all the risks involved; and were fully aware of all transactions which took place. Additionally, Respondents asserted the affirmative defenses of: failure to state a cause of action; failure to mitigate damages; failure to exercise due diligence; assumption of risk; that there is no private right of action for Securities and Exchange Commission rules or internal policy provisions; lack of justifiable reliance; ratification; waiver; estoppel; lack of scienter; failure to comply with the provisions of Florida Statute Section 768.72 and violations of the Due Process and Equal Protection Clauses of the 14th Amendment to U.S. Constitution.

RELIEF REQUESTED

Claimants, Ordonez and Minoz, requested damages in the amount of \$67,005.47 plus interest, costs, attorney's fees and punitive damages. Claimants, Francisco and Margarita Afandor, requested damages in the amount of \$74,704.21 plus interest, costs, attorney's fees and punitive damages. The actual damages being requested were supplemented and updated at the hearing. Respondents requested dismissal of the claims plus costs.

AWARD

On January 4, and 5, 1990, and September 4 and 5, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, Ordonez and Minoz, on July 22, 1987 and by the Afandors, on September 23, 1987, and by Respondents, Shearson, on December 18, 1987 and March 14, 1987, and by Strasdas, and Fasulo, on January 4, 1989. 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. 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, Inc.
2. Respondents, Shearson and Strassdas, are hereby liable, jointly and severally, and shall pay to Claimants, Ordonez, and Munoz, the amount of Ninety One Thousand Nine Hundred Ninety Two and 66/100 (\$91,992.66) Dollars inclusive of interest at the rate of 12% per annum.
3. Respondents, Shearson and Strassdas, are hereby liable, jointly and severally, and shall pay to the Claimants, Francisco and Margarita Afandor, the amount of One Hundred Forty Six Thousand Nine Hundred Forty Three and 67/100 (\$146,943.67) Dollars inclusive of interest at the rate of 12% per annum.
4. Respondent, Pasulo, is not liable and, therefore, the claims against him are hereby dismissed in all respects.
5. Claimants' requests for punitive damages and attorney's fees are hereby dismissed in all respects.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars (\$750 x 8 sessions). Claimants, Ordonez and Munoz, are hereby assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars for which they shall be jointly and severally liable and Francisco and Margarita Afandor, are hereby assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars for which they shall be jointly and severally liable. Respondents, Shearson and Strassdas, are hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars for which they shall be jointly and severally liable. The National Association of Securities Dealers, Inc. shall retain the One Thousand Two Hundred Fifty and 00/100 (\$1,250.00) Dollar filing fee previously deposited by the Claimants with the NASD, Inc. in partial satisfaction of Claimants' share of such forum fees.
7. The parties shall each bear all other costs and expenses incurred by them in connection with these proceedings, including attorneys' fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

**Marina Shank-Klein, Esq.
Perry N. Miller
Myron Dunay, Esq.**

Dated: September 26, 1990