

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitrations Between

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GARY ZIER,

Claimant,

vs.

SHEARSON LEHMAN BROTHERS, INC.,

Respondent.

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)  
) Case #88-02306

) Award  
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MICHAEL I. ZIER & ASSOCIATES, P.A.; MICHAEL  
I. ZIER & ASSOCIATES, P.A. TARGET BENEFIT  
PENSION PLAN; ZIER & PARNES, P.A. CASH OR  
DEFERRED PROFIT SHARING PLAN; AND, MICHAEL  
I. ZIER, INDIVIDUALLY AND AS TRUSTEE,

vs.

SHEARSON LEHMAN BROTHERS, INC.

Claimants,

Respondent.

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)  
) Case #88-02307

) Award  
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Heard before the members of the Arbitration Panel:

Edward J. Marko, Esq.  
Patricia A. Shub, Esq.  
Samson Silberman

CASE SUMMARY

These claims were filed with the NASD, Inc. on July 19, 1988. The hearings were conducted in Fort Lauderdale, Florida on October 18, October 19, November 20, November 22, November 29, 1989, with a total of 13 sessions.

Claimants, Gary Zier ("GZ"); Michael I. Zier & Associates, P.A. ("Zier & Assoc."); Michael I. Zier & Associates, P.A. Target Benefit Pension Plan ("Pension Plan"); Zier & Parnes, P.A. Cash or Deferred Profit Sharing Plan ("Zier & Parnes"); and, Michael I. Zier, Individually and as Trustee ("MZ"), alleged that Respondent, Shearson Lehman Brothers, Inc. ("Shearson"), was liable for: violating Section 17(2) of the Securities and Exchange Act; violating Florida Statutes, Sections 517.301 and 517.211; fraud; breach of fiduciary duty; churning; negligence; and, unsuitability. Additionally, MZ alleged defamation.

Respondent alleged that: MZ made all trading decisions for all accounts, including GZ's, and, therefore, he is responsible for any losses in any of the accounts; no representations were made that were based on purported inside information and the securities were suitable for MZ. Respondent asserted the affirmative defenses of: waiver; ratification; estoppel; laches; lack of proximate cause; and statute of limitations. Additionally, Respondent asserted the affirmative defenses to GZ's claim of: good faith and failure to mitigate damages.

## RELIEF REQUESTED

Claimant, GZ, requested damages in the amount of \$30,000.00, plus punitive damages, attorney's fees and other costs. The remaining Claimants requested damages in the amount of \$300,000.00, plus punitive damages, attorney's fees and other costs, as well as an injunction against any further defamation. Respondent requested dismissal of the claims, attorney's fees and other costs.

## AWARD

On October 18 and 19, November 20, 22, and 29, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, GZ, on July 6, 1988; by the remaining Claimants on July 13, 1988; and by Respondent on December 20, 1988 and on February 3, 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. Respondent, Shearson, is hereby liable and shall pay to Claimant, GZ, the amount of Thirty Thousand and 00/100 (\$30,000.00) Dollars.
3. Respondent, Shearson, is hereby liable and shall pay to the Claimants, MZ; Zier & Associates; Pension Plan; and, Zier & Parnes, the amount of Fifty Five Thousand and 00/100 (\$55,000.00) Dollars, inclusive of Five Thousand and 00/100 (\$5,000.00) Dollars for costs.
4. Claimants' requests for attorneys' fees are hereby dismissed in all respects.
5. Respondent's request for attorney's fees is hereby dismissed in all respects.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Thirteen Thousand and 00/100 (\$13,000.00) Dollars (\$1,000.00 X 13 sessions). Claimant, MZ, is hereby assessed forum fees in the amount of Four Thousand One Hundred Sixty Seven and 00/100 (\$4,167.00) Dollars, which leaves a balance due of Three Thousand One Hundred Sixty Seven and 00/100 (\$3,167.00) Dollars and the Respondent is hereby assessed forum fees in the amount of Eight Thousand Eight Hundred Thirty Three and 00/100 (\$8,833.00) Dollars, Five Hundred and 00/100 (\$500.00) Dollars of which shall be paid directly to Claimant GZ as a return of his filing fee and Eight Thousand Three Hundred Thirty Three and 00/100 (\$8,333.00) Dollars of which shall be paid directly to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the Five Hundred and 00/100 (\$500.00) Dollar and One Thousand and 00/100 (\$1,000.00) Dollar filing fees previously deposited by the Claimants with the NASD, Inc. in partial satisfaction of such forum fees.

7. The Panel has assessed Respondent, Shearson, the further amount of Eighty Two and 50/100 (\$82.50) Dollars for costs incurred by the NASD, Inc., which amount shall be paid directly to the NASD.
8. The parties shall each bear all other costs and expenses incurred by them in connection with these proceedings.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Edward J. Marko, Esq.  
Patricia A. Shub, Esq.  
Mr. Samson Silberman

Dated: January 23, 1990