

N.A.S.D. STIPULATED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William R. Bahr

Case No. 88-03436

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Martin Tamaroff
Stephen Friedman

REPRESENTATION

For Claimant, William R. Bahr ("Bahr"): Richard Levenstein, Esq. of Heimberg, Heimberg, Roder & Levenstein.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson"), Martin Tamaroff ("Tamaroff") and Steven Friedman ("Friedman"): R. Lawrence Bonner, Esq. of Greer, Homer & Bonner, P.A.

CASE INFORMATION

Statement of Claim filed: November 7, 1988 and Supplement to Statement of Claim filed: November 2, 1992. Claimant's Submission Agreement signed: October 7, 1988.

Respondents' Amended Statement of Answer and Counterclaim filed: January 29, 1991. Respondents' Submission Agreements signed: January 31, 1989 by Friedman, and Tamaroff, and on January 27, 1989 by Eugene Small on behalf of Shearson.

Respondents' Response to Claimant's Supplement to Statement of Claim filed February 5, 1993.

HEARING INFORMATION

On October 16, 1990; January 29 and 30, 1991; October 19, 1992; February 10, 11 and 12; April 7, 8 and 12; May 10, 11 and 28; June 7; and, September 21, 1993 in Fort Lauderdale, Florida, hearings lasting 24 sessions were conducted.

CASE SUMMARY

Claimant alleged that: Respondents were liable for violations of Sections 12(1) and (2) of the Securities Act of 1933; violations of Sections 517.97, 517.301, 812.014, 772.10, 772.01-04 of the Florida Statutes; violation of Title 18 U.S.C. Section 1962 et. seq.; common law fraud; negligent safekeeping and investment of Claimant's assets; negligent hiring; negligent supervision; negligent retention; and, breach of fiduciary duty. Claimant alleged that Respondents recommended that he trade in options without advising Claimant of the risks involved and that such trading was unsuitable for Claimant in light of his investment objectives, sophistication, experience, and financial situation. Additionally, Claimant alleged that Respondents fraudulently prepared account opening documents for Claimant's account.

Respondents denied all allegations of wrongdoing and alleged that: Claimant's investment objective was speculative; Claimant was advised of the risks; there was no fiduciary duty between Claimant and Respondents; Claimant was a sophisticated investor; and, all transactions were made on an unsolicited basis.

Respondents alleged the affirmative defenses of: waiver; ratification; estoppel; assumption of risk; market forces were responsible for the losses; and the losses were sustained, in whole or in part, by Claimant's own negligence.

Respondent, Shearson, filed a Counterclaim, and alleged that Claimant is liable for a debit balance in his account.

Claimant responded to the Counterclaim by denying liability and alleging that he is not indebted to Shearson due to the improper and unlawful conduct of Respondents.

RELIEF REQUESTED

Claimant requested damages in the amount of \$40,000 plus interest, attorney's fees, costs, rescission and punitive damages of \$1,000,000. Claimant also requested dismissal of the Counterclaim.

Respondents requested dismissal of the Claim plus costs and Respondent, Shearson, Counterclaimed for damages of \$95,112.

OTHER ISSUES CONSIDERED & DECIDED

1. The Panel has granted Claimant's request for a waiver of the \$1,000 forum fee for the first hearing session held on October 16, 1990.
2. By agreement of the parties, this Stipulated Award addresses only Claimant's Claims against Respondents, Shearson and Tamaroff and Shearson's Counterclaim against Claimant. The issue of liability of Respondent, Friedman, is addressed in a separate Final Order which is not incorporated into, or made a part of, this Stipulated Award.
3. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

AWARD

This matter came before the undersigned Arbitrators upon stipulation of the parties to the controversy as set forth in the submission to arbitration. The Arbitration Panel, having reviewed the attached Stipulation for Voluntary Dismissal with Prejudice, Notice of Voluntary Dismissal with Prejudice and proposed Order Dismissing Counts I-VII has agreed to the resolution of the issues submitted for determination as follows:

The undersigned Panel hereby consents to the attached Stipulation for Voluntary Dismissal with Prejudice and Notice of Voluntary Dismissal with Prejudice signed by counsel for the respective parties, and incorporates said Stipulation for Voluntary Dismissal with Prejudice and Notice of Voluntary Dismissal by reference into this Award. The Panel has, consequently, approved and issued the attached Order Dismissing Counts I-VII as requested by the parties and incorporates said Order by reference into this Award.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$23,000 (24 sessions x \$1,000 per session less \$1,000 waived by the arbitrators).
2. Claimant is hereby assessed \$11,500 for which the NASD shall retain the \$9,000 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$2,500.
3. Respondent, Shearson, is hereby assessed \$11,500 for which the NASD shall retain the \$11,500 previously deposited in full satisfaction thereof.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signatures

/s/
Joseph L. Garuncho, Esq.

Public

/s/
Douglas Delahoy, Jr.

Industry

/s/
Steven D. Elias, Esq.

Public

Date of Decision: 11/10/93

BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
CASE NO. 88-03436

In the Matter of the Arbitration
of WILLIAM R. BAHR,

Claimant,

vs.

SHEARSON LEHMAN BROTHERS INC.,
MARTIN TAMAROFF and STEPHEN R. FRIEDMAN,

Respondents.

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE

Claimant William R. Bahr ("Bahr"), by and through undersigned counsel, hereby requests the arbitration panel assigned to this matter to dismiss with prejudice all claims asserted by him in Counts I through VII of his Statement of Claim, including Count I for violation of Section 12(1) of the Securities Act of 1933 (15 U.S.C. Section 771(1)); Count II for violation of Section 12(2) of the Securities Act of 1933 (15 U.S.C. Section 771(2)); Count III for violations of Section 517.97, Fla.Stat.; Count IV for violation of Section 517.301, Fla.Stat.; Count V for violations of Section 812.014 and section 772.10, Fla.Stat.; Count VI for claims arising under Section 772.01-04, Fla.Stat.; and Count VII (misnamed as Count VIII) for violation of Title 18 U.S.C. Section 1962, et seq.

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Respondents.

ORDER DISMISSING COUNTS I-VII

THIS CAUSE having come on to be heard on the Notice of Voluntary Dismissal With Prejudice of claimant William R. Bahr ("Bahr"), and the arbitration panel having reviewed the pleadings and having been fully advised, it is hereby

ORDERED AND ADJUDGED


All claims set forth in Counts I through VII of the Statement of Claim, including Count I for violation of Section 12(1) of the Securities Act of 1933 (15 U.S.C. Section 771(1)); Count II for violation of Section 12(2) of the Securities Act of 1933 (15 U.S.C. Section 771(2)); Count III for violations of Section 517.97, Fla.Stat.; Count IV for violation of Section 517.301, Fla.Stat.; Count V for violations of Section 812.014 and section 772.10, Fla.Stat.; Count VI for claims arising under Section 772.01-04,

Respectfully Submitted:

HEIMBERG, HEIMBERG, RADER &
LEVENSTEIN

Attorneys for Bahr
7280 West Palmetto Road
Suite 106
Boca Raton, Florida 33433
(407) 392-9000

By:

 ^{for}
RICHARD LEVENSTEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Voluntary Dismissal with Prejudice was provided by telecopier and mail this 3rd day of ~~June~~ ^{AUGUST}, 1993 to R. Lawrence Bonner, Esq., Greer, Homer & Bonner, P.A., 100 S.E. 2nd Street, Suite 3400, Miami, Florida 33131 and the original and three copies were provided to Alan Foxman, Esq., National Association of Securities Dealers, Inc., One East Broward Blvd., Suite 1000, Fort Lauderdale, Florida 33301.

 ^{for}
RICHARD H. LEVENSTEIN

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Fla.Stat.; and Count VII (misnamed as Count VIII) for violation of Title 18 U.S.C. Section 1962, et seq. are hereby DISMISSED with prejudice.

DONE AND ORDERED this 10 day of 11, 1993.

/s/
Robert Caruncho, Chairperson

/s/
Steven Elias, Public Arbitrator

/s/
Douglas Delanoy, Industry Arbitrator

Copies furnished to:

R. Lawrence Bonner, Esq.
Richard Levenstein, Esq.

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BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
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vs.

SHEARSON LEHMAN BROTHERS INC.,
MARTIN TAMAROFF and STEPHEN R. FRIEDMAN,

Respondents.

STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

Claimant William R. Bahr ("Bahr") and respondents Shearson Lehman Brothers Inc. ("Shearson") and Martin Tamaroff ("Tamaroff"), by and through their undersigned counsel, hereby stipulate to the dismissal with prejudice of all claims asserted by claimant Bahr in his Statement of Claim and any and all amendments to his Statement of Claim and all claims asserted by respondents Shearson and Tamaroff in their Counterclaim with claimant Bahr and respondents Shearson and Tamaroff to pay their own respective costs and attorneys' fees incurred herein.

Respectfully Submitted:

GREER, HOMER & BONNER, P.A.
Attorneys for Shearson and
Tamaroff
3400 International Place
100 S.E. Second Street
Miami, Florida 33131
(305) 359-5100

By: 


R. LAWRENCE BONNER

EXHIBIT F

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By:


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