

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

B.C. Christopher Securities Co., Inc.

No. 89-02780

Names of Respondents/Counterclaimants

Frank and Debra Marsilio

Names of Third-Party Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Shearson Lehman Brothers, Inc.,

Robert Ruppert,

A. G. Edwards & Sons, Inc.,

Scottsdale Securities, Inc.,

and

Bruno Stolze & Co., Inc.

REPRESENTATION OF PARTIES

Claimant and Third-Party Respondent, B. C. Christopher Securities Co., Inc. was represented by J. Bret Armatas, Esq. of Calkins, Weisenfels & Vaughn, Kansas City, Missouri.

Respondents and Third-Party Claimants, Frank and Debra Marsilio were represented by Craig A. Newman, Esq. and P. Terence Krebs, Esq. of Herzog, Krebs & McGhee, St. Louis, Missouri.

Third-Party Respondent, Scottsdale Securities, Inc. was represented by Roger Riney of Scottsdale Securities, Inc., St. Louis, Missouri.

Third-Party Respondent, A. G. Edwards & Sons, Inc. was represented by Clay L. Grumke, Esq. of A. G. Edwards & Sons, Inc., St. Louis, Missouri.

Third-Party Respondent, Bruno Stolze & Co., Inc. was represented by Joseph Rebman, Esq. of Dubail Judge, St. Louis, Missouri.

Third-Party Respondent. Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented by Margaret Mooney, Esq. of Lashly & Baer, St. Louis, Missouri.

Third-Party Respondent, Shearson Lehman Brothers, Inc. was represented by Thomas Knepper, Esq. of Neal, Gerber & Eisenberg, Chicago, Illinois.

Third-Party Respondent, Robert Ruppert, appeared pro se.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant, B.C. Christopher Securities Company, Inc. on October 6, 1989.

Claimant, B.C. Christopher Securities Company's Submission Agreement was signed on September 25, 1989 by Robert S. Opphold, Vice-President and General Counsel.

The Statement of Answer, CounterClaim and Third Party Claim was filed with the NASD by Respondents, Frank and Debra Marsilio on January 12, 1990.

Respondents, Frank and Debra Marsilio signed a Submission Agreement on September 7, 1989.

B.C. Christopher filed an Answer to the Marsilios' Counterclaim with the NASD on February 13, 1990.

Third-party Respondent, Robert Ruppert's Answer was filed with the NASD on March 30, 1990.

Third-party Respondent, Robert Ruppert's Submission Agreement was signed on March 29, 1990.

Third-party Respondent, Shearson Lehman Brothers, Inc. filed an Answer to the Marsilios's Third-party claim, Motion to implead a Third-party Claim against Third Party Respondent, A. G. Edwards & Sons, Inc. and Motion to Dismiss the Third-party Claim of the Marsilios with the NASD on or about April 12, 1990.

Third-party Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement was signed on May 24, 1991 by Harry D. Frisch, Esq., First Vice President and Associate General Counsel.

Third-party Respondent, Shearson Lehman Brothers, Inc. filed an Answer, Affirmative Defenses, Cross-claims against Third-party Respondents, Robert Ruppert and B.C. Christopher,

Third-party Claims against Merrill Lynch, A.G. Edwards & Sons, Inc., Bruno Stolze &

Company, Inc. and Scottsdale Securities, Inc. with the NASD on October 2, 1991.

Third-party Respondent, A.G. Edwards & Sons, Inc. filed a Motion to Dismiss Shearson's Third-party Claim asserted against it with the NASD on June 27, 1991.

Third-party Respondent, A.G. Edwards & Sons, Inc. did not file an executed Submission Agreement with the NASD but is required to submit to the jurisdiction of the NASD pursuant to Section 8(a)(1) of the NASD Code of Arbitration Procedure.

Third-party Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. filed a Motion to Dismiss Shearson's Third-party claim asserted against it with the NASD on November 21, 1991.

Third-party Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. did not file an executed Submission Agreement with the NASD but is required to submit to the jurisdiction of the NASD pursuant to Section 8(a)(1) of the NASD Code of Arbitration Procedure.

Third-party Respondent, Bruno Stolze & Company, Inc. filed a Motion to Dismiss Shearson's Third-party claim asserted against it with the NASD on or about November 5, 1991 and filed an amended Motion to Dismiss with the NASD on February 6, 1992.

Third-party Respondent, Bruno Stolze & Company, Inc.'s Submission Agreement was signed on November 5, 1991 by Roy Stolz, President.

Third-party Respondent, Scottsdale Securities, Inc. filed an Answer to the Third-party Claim asserted against it by Shearson and a Motion to Dismiss the Third-party Claim of Shearson with the NASD on October 21, 1991.

Third-party Respondent, Scottsdale Securities, Inc. did not file an executed Submission Agreement with the NASD but is required to submit to the jurisdiction of the NASD pursuant to Section 8(a)(1) of the NASD Code of Arbitration Procedure.

The Marsilios filed a Response to Shearson's Answer, Amended Answer, Amended Counterclaim and Amended Third-party Claim with the NASD on February 6, 1991.

Ruppert did not answer the cross-claim filed against him by Shearson.

HEARING INFORMATION

A preliminary hearing was held before the arbitration panel in St. Louis, Missouri on February 20, 1992 with all parties named above in the case style, except Respondent, Robert Ruppert represented by counsel. During this preliminary hearing, certain procedural motions were addressed by the panel. Respondent, Robert Ruppert did not appear at this preliminary hearing although he was given adequate notice of the time, place and date for the preliminary hearing.

Following this preliminary hearing, the panel issued a written order which is set forth elsewhere in this award and the matter was reset for hearing on October 12, 1992. The hearing went forward on that date in St. Louis, Missouri and the hearing lasted for two (2) hearing sessions.

CASE SUMMARY

Claimant, B.C. Christopher Securities Co., Inc. ("B.C. Christopher") alleged that Respondents, Frank and Debra Marsilio ("the Marsilios") were customers of B.C. Christopher who executed a joint account agreement on or about April 5, 1989. B.C. Christopher alleged that pursuant to this agreement, the Marsilios agreed to be jointly and severally liable to B.C. Christopher, for any obligations or liabilities arising in connection with purchases or sales of securities in their securities account maintained at B.C. Christopher.

B.C. Christopher alleged that the Marsilios purchased 10,000 shares of American Continental Corporation ("American Continental") preferred stock in and for their account at B.C. Christopher on April 10, 1989. There remains due and owing for this stock purchase the balance of the purchase price which the Marsilios have refused to pay despite demand. B.C. Christopher further asserted that the Marsilios engaged in fraud on B.C. Christopher when they knowingly misrepresented their intentions to pay for all purchases of stock in their account at B.C. Christopher.

The Marsilios answered the Claim and denied the allegations. The Marsilios asserted a Counterclaim against B.C. Christopher, a Third-party Claim against Robert Ruppert ("Ruppert") and a Third-party Claim against Shearson Lehman Hutton, Inc. n/k/a Shearson Lehman Brothers, Inc. ("Shearson"). The Marsilios asserted that neither of them had any degree of sophistication in securities dealing and that they trusted their broker, Ruppert and relied on him to invest their money safely and conservatively. The Marsilios asserted that Ruppert recommended they invest their entire liquid net worth in American Continental.

The Marsilios alleged that Ruppert represented American Continental as planning to go private and that the President of American Continental, Charles Keating, had personally offered

\$14 per share for the stock Ruppert controlled. Ruppert allegedly told The Marsilios that he believed the stock was worth \$20 per share. Ruppert also allegedly stated to the Marsilios that their purchases of American Continental stock were as "safe as C.D.'s". The Marsilios alleged that the American Continental stock was unsuitable for them and that the activities engaged in by Shearson, Ruppert and B.C. Christopher amounted to market manipulation. The Marsilios also asserted that neither Shearson nor B.C. Christopher adequately supervised Ruppert.

B.C. Christopher denied the allegations of the Counter-Claim asserted against it by the Marsilios.

Ruppert answered the Third-party Claim asserted against him by the Marsilios and denied the allegations. Ruppert denied that he made misrepresentations concerning American Continental or that American Continental was an unsuitable investment for the Marsilios at the time of their purchases. In fact, Ruppert alleged that the Marsilios purchased approximately 1000 shares of American Continental stock from Ruppert when he was employed by Third-party Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). Ruppert denied telling the Marsilios that the American Continental stock was as "safe as CD's".

Shearson answered the Third-party Claim asserted against it by the Marsilios and denied the allegations. Shearson denied that Ruppert misrepresented facts concerning American Continental. Shearson maintained that any shares of American Continental which were in the account maintained by the Marsilios at Shearson were purchased from other broker-dealers and that no transaction occurred through Shearson which would allow for an award of damages to the Marsilios from Shearson. On this basis, Shearson moved to dismiss the third-party claim asserted against it by the Marsilios.

The Marsilios answered Shearson's Motion to Dismiss and asserted that it was without merit.

Shearson also asserted a third-party claim for indemnification against A. G. Edwards & Sons, Inc., Scottsdale Securities, Inc., Bruno Stolze & Company, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. and a cross-claim for indemnification against Ruppert and a cross-claim against B.C. Christopher.

Ruppert denied that there was any statutory or implied right of indemnity or contribution in favor of Shearson against him under Section 10(b) of the Securities Exchange Act.

B.C. Christopher also denied the allegations of the cross-claim asserted against it by Shearson.

Third-party Respondent, A. G. Edwards & Sons, Inc. ("A.G. Edwards") asserted a Motion to Dismiss the third-party claim asserted against it Shearson on the basis that no transactions in American Continental occurred at A.G. Edwards.

Third-party Respondent, Scottsdale Securities, Inc. ("Scottsdale") answered the third-party claim asserted against it by Shearson and denied the allegations. In addition, Scottsdale moved to dismiss the third-party claim asserted against it by Shearson on the basis that the assertions contained in the third-party claim failed to alleged any action or misconduct by Scottsdale which would render it liable to Shearson or any other party to this matter.

Third-party Respondent, Bruno Stolze & Company, Inc. ("Bruno Stolze") denied the allegations of the third-party complaint asserted against it by Shearson and moved to dismiss the third party claim on the same basis as that asserted by Scottsdale Securities.

Third-party Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. also denied the allegations of the Third-party claim asserted against it by Shearson on the basis that applicable statutes of limitation barred the claim. Merrill Lynch also adopted A.G. Edwards' position in its Motion to Dismiss the Third-party claim asserted against it by Shearson.

RELIEF REQUESTED

B.C. Christopher requested damages of \$44,872.98, punitive damages of \$500,000.00, interest and for such other relief as may be appropriate under the circumstances.

The Marsilios requested dismissal of the Claim asserted against them by B.C. Christopher, an award against Shearson, Ruppert and B.C. Christopher of their losses sustained on the American Continental in the sum of \$370,000.00, interest on margin in the amount of \$75,000, lost investment opportunity of \$150,000 and punitive damages of \$500,000 based upon common law fraud, deceit, breach of fiduciary duty, negligence, failure to supervise and violations of federal securities law.

Ruppert requested dismissal of the Third-party Claims the Marsilios asserted against him and an award to him of his expenses and attorney's fees incurred to defend the matter. Ruppert requested dismissal of the Cross-claim asserted against him by Shearson.

Shearson requested dismissal of the Marsilios' Third-party Claim asserted against it or in the alternative requested indemnity from Ruppert by way of a Cross-claim against Ruppert if an award was entered against Shearson in favor of the Marsilios. Shearson also requested indemnity from A.G. Edwards, Merrill Lynch, Scottsdale Securities, B.C. Christopher and Bruno Stolze by way of third-party claims against these parties.

A.G. Edwards requested dismissal of the third-party claim asserted against it by Shearson.

Bruno Stolze requested dismissal of the third-party claim asserted against it by Shearson.

B.C. Christopher requested dismissal of the third-party claim asserted against it by Shearson.

Scottsdale Securities requested dismissal of the third-party claim asserted against it by Shearson.

Merrill Lynch requested dismissal of the third-party claim asserted against it by Shearson.

B.C. Christopher requested dismissal of the Marsilios' Counterclaim asserted against it and requested alternatively a set off of its Claim plus pre-judgment and post-judgment interest. B.C. Christopher also requested dismissal of Shearson's cross-claim for indemnity.

PROCEDURAL ISSUES

Shearson's Motion to Dismiss the Marsilios's third-party claim pursuant to Section 12(b) was denied by the Director of Arbitration and Shearson was given leave to file a motion to dismiss the third-party claim pursuant to Section 16 for determination by the arbitration panel. Shearson filed a motion for this relief.

The NASD appointed a panel which considered this motion as well as Shearson's motion to implead A.G. Edwards and the Marsilio's motion to file an Amended Answer, an Amended Counterclaim and an Amended Third-party Claim. This panel also considered a motion to consolidate this arbitration matter with two other cases.

The Motion to dismiss Shearson, the Marsilio's motion to file an amended answer, amended counterclaim and amended third-party claim by the Marsilios and the motion to consolidate the claims were all denied. Shearson's motion to implead A. G. Edwards was granted.

Since the panel appointed by the NASD denied the consolidation of the three cases, new panels were convened to individually hear the merits of each of the three cases.

A Preliminary hearing lasting one session was held before the arbitrators in this matter on February 20, 1992 in St. Louis, Missouri. The arbitrators were asked to rule upon certain motions to dismiss filed by the parties and determined to have all parties present before the panel in St. Louis for this purpose. Following this preliminary hearing, the arbitrators entered the following Order which was served on all parties:

This case coming on to be heard on February 20, 1992 in St. Louis, Missouri regarding Motions to Dismiss filed by Third-Party Respondents, Shearson Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., A. G. Edwards & Sons, Inc., Bruno Stoltz & Co., Inc. and Scottsdale Securities, Inc.

and certain stipulated dismissals with prejudice concerning various Third-Party claims and/or cross-claims having been filed by other parties, the undersigned arbitrators have considered the written motions, pleadings, oral argument presented at the hearing and supplemental briefs filed post-hearing and hereby enter the following order:

1. Claimant, B. C. Christopher Securities Co., Inc.'s voluntary stipulation to dismiss with prejudice the Third-Party claims it filed against Third-Party Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bruno Stolze & Co., Inc. is granted;
2. Third-Party Respondent, Shearson Lehman Brothers, Inc.'s motion to dismiss with prejudice all Cross-Claims it filed against Third-Party Respondents Scottsdale Securities, Inc., Bruno Stolze & Co., Inc. and B. C. Christopher Securities Company, Inc. is granted;
3. By virtue of the stipulated dismissals with prejudice having been accepted and granted by the arbitration panel, the respective motions to dismiss filed by Third-Party Respondents, A. G. Edwards & Sons, Inc., Bruno Stolze & Co., Inc., Scottsdale Securities, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. are rendered moot;
4. To the extent there remains a Counter-Claim against Claimant, B. C. Christopher Securities Co., Inc. by Respondent and third-party Claimants, Frank and Debra Marsilio, B. C. Christopher is granted leave to pursue a Cross-Claim against Third-Party Respondent Robert Ruppert;
5. Third-Party Respondent, Robert Ruppert's Motion to Compel a response to his document request from Third-Party Respondent, Shearson Lehman Brothers, Inc. is held in abeyance;
6. Third-Party Respondent, Shearson Lehman Brothers, Inc.'s Motion to Dismiss the Third-Party Claim filed against Third-Party Respondent, Shearson Lehman Brothers, Inc. by Respondents, Frank and Debra Marsilio is granted;
7. Third-Party Respondent, Shearson Lehman Brothers, Inc. shall directly reimburse all forum costs incurred by any party dismissed from this proceeding;
8. Third-Party Respondent, Shearson Lehman Brothers, Inc. is assessed the forum costs of the hearing held in St. Louis, Missouri

on February 20, 1992; and,

9. Third-Party Respondent, Shearson Lehman Brothers, Inc.'s motion for costs and fees is denied.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 original remains on file with the NASD.

The various motions to dismiss having been addressed in the preliminary motion as noted above, the panel addressed only the matters detailed in the Award section below.

At the hearing the panel heard argument on Third-party Respondent, Ruppert's Motion to dismiss the amended third-party/counterclaim of Respondents, Marsilio and the pending motion of Claimant/Counter-Respondent, B.C. Christopher to dismiss the amended counterclaim of the Marsilios (filed on October 5, 1992). After entertaining argument, the panel granted the motions and these claims were dismissed.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions of the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents and Counter-Claimants Frank and Debra Marsilio are liable for and shall pay to Claimant, B.C. Christopher in favor of its claim against them, the sum of Forty Four Thousand Eight Hundred Seventy Three dollars and No Cents (\$44,873.00);
2. Simple interest at the rate of 9% per annum (\$336.50 per month) is assessed on the above stated sum from and inclusive of June 5, 1989 to and inclusive of the award is paid;
3. B.C. Christopher's claim for punitive damages is denied and dismissed in its entirety; and
4. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the non-refundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in

the amount of \$500.00 previously paid to the NASD by B.C. Christopher. Frank and Debra Marsilio are jointly and severally assessed additional Forum Fees in the amount of \$600.00. B.C. Christopher is assessed additional Forum Fees in the amount of \$100.00.

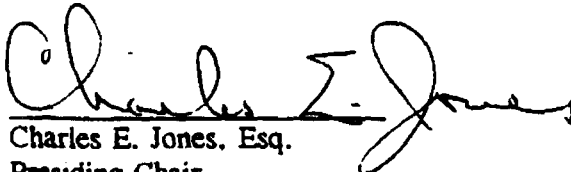
Forum Fees were assessed on the basis of \$600.00 per hearing session for two hearing sessions.

Additional Forum Fees or non-paid filing fees assessed to the parties by the arbitration panel are payable to the NASD.

Panel Members Concurring

Dated:

Feb. 4, 1993



Charles E. Jones, Esq.
Presiding Chair
Public Arbitrator

Warren Van Norman, Esq.
Panelist
Public Arbitrator

Marvin Frazier
Panelist
Industry Arbitrator

Date award served by the NASD:

2/12/93

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Panel Members Concurring

Dated:

Charles E. Jones, Esq.
Presiding Chair
Public Arbitrator

2-8-93



Warren Van Norman, Esq.
Panelist
Public Arbitrator

Marvin Frazier
Panelist
Industry Arbitrator

Date award served by the NASD: _____

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Additional Forum Fees or non-paid filing fees assessed to the parties by the arbitration panel are payable to the NASD.

Panel Members Concurring

Dated:

Charles B. Jones, Esq.
Presiding Chair
Public Arbitrator

Warren Van Norman, Esq.
Panelist
Public Arbitrator

February 9, 1993

Marvin Frazier
Marvin Frazier
Panelist
Industry Arbitrator

Date award served by the NASD: _____