

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. 89-03049

Name of Respondent/Counterclaimant

Robert W. Grellner

Name of Third-Party Respondents

Shearson Lehman Brothers, Inc.,  
Robert Ruppert, and Stifel, Nicolaus & Company, Inc.

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REPRESENTATION OF PARTIES

Claimant, B.C. Christopher Securities Company, Inc. was represented by J. Brett Armatas, Esq. of Calkins, Wiesenfels & Vaughn, Kansas City, Missouri.

Respondent, Robert W. Grellner was represented by Terrence P. Krebs, Esq. and Craig A. Newman, Esq. of Herzog, Krebs & McGhee, St. Louis, Missouri.

Third-party Respondent, Robert Ruppert appeared pro se.

Third-party Respondent, Shearson Lehman Brothers, Inc. was represented by Therese M. Obringer, Esq. of Neal, Gerber & Eisenberg, Chicago, Illinois.

Third-party Respondent, Stifel, Nicolaus & Company, Inc. was represented by Forrest M. Smith, Esq. of Stifel, Nicolaus & Company, Inc., St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed with the 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, 1991 by Robert S. Opphold, Vice-President and General Counsel.

The Statement of Answer was filed with the NASD by Respondent, Robert W. Grellner on January 12, 1990.

Respondent Robert W. Grellner's Submission Agreement was signed on September 7, 1989.

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 Grellner's Third-party claim with the NASD on April 4, 1990.

Third-party Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement was signed on April 4, 1990 by William A. Hohausen.

B.C. Christopher filed an Answer to Grellner's Counterclaim with the NASD on or about February 12, 1990.

Grellner filed an Amended Answer, Amended Counterclaim and Amended Third-party Claim with the NASD on February 6, 1991.

B.C. Christopher filed an Answer to Grellner's Amended Counterclaim with the NASD on February 25, 1991.

Shearson filed an Answer to Grellner's Amended Third-party Claim with the NASD on August 28, 1991.

Shearson also filed an Amended Answer, Counterclaim against B.C. Christopher and Third-party Claim against Stifel, Nicolaus & Co., Inc. with the NASD on August 28, 1991.

Ruppert did not answer the crossclaim against him by Shearson.

Stifel, Nicolaus & Company, Inc. filed an Answer to the Third-party Claim of Shearson with the NASD on or about October 14, 1991.

Stifel, Nicolaus & Company, Inc. filed an Amended Answer to Shearson's Third-party Claim and a Motion to Dismiss with the NASD on or about October 25, 1991.

Stifel, Nicolaus & Company, Inc. filed a Third-party Counterclaim against Grellner with the NASD on or about October 24, 1991.

Stifel, Nicolaus & Company, Inc. did not file an executed submission agreement with the NASD.

Grellner did not answer the Third-party Counterclaim of Stifel Nicolaus.

#### HEARING INFORMATION

The dates of the hearing and number of sessions per day were as follows:

December 3, 1991 for two (2) hearing sessions  
December 4, 1991 for two (2) hearing sessions  
December 5, 1991 for two (2) hearing sessions  
January 22, 1992 for two (2) hearing sessions  
January 23, 1992 for two (2) hearing sessions, and  
January 24, 1992 for two (2) hearing sessions.

The hearing location was St. Louis, Missouri.

#### CASE SUMMARY

Claimant, B.C. Christopher Securities Co., Inc. ("B.C. Christopher") alleged that Respondent, Robert Grellner ("Grellner") was a customer of B.C. Christopher who executed a margin agreement on or about January 4, 1989. B.C. Christopher alleged that pursuant to this agreement, Grellner agreed to pay B.C. Christopher, upon demand, for all stock purchases and to maintain his account margin as required by B.C. Christopher. B.C. Christopher alleged that Grellner purchased 8,030 shares of American Continental Corporation ("American Continental") preferred stock on margin in January of 1989.

When the price of American Continental declined, Grellner allegedly refused to post additional deposits to his account at the request of B.C. Christopher in order to meet margin calls. B.C. Christopher thereafter liquidated the American Continental stock to cover the margin deficit. This liquidation left a debit balance in Grellner's account in the amount of \$16,056.04 which sum remains due and owing despite demands made of Grellner to pay. B.C. Christopher alleged Grellner was in breach of contract by virtue of this non-payment.

Grellner answered the Claim and denied the allegations. Grellner 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"). Grellner asserted that he lost his entire net worth as a result of securities trading at Shearson, B. C. Christopher and elsewhere. Grellner asserted that he told Ruppert that he was forced to take early retirement from Anhauser-Busch and that he needed to invest his retirement benefits to provide a stable income with preservation of capital.

Grellner alleged that Ruppert recommended that Grellner invest his entire liquid net worth in American Continental common and preferred stock.

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

Ruppert answered the Third-party Claim by Grellner and denied the allegations. Ruppert denied that American Continental was an unsuitable investment for Grellner at the time of Grellner's purchases. In fact, Ruppert alleged that Grellner already owned this stock when he met Ruppert and Grellner had knowledge of and experience with the company. Ruppert denied telling Grellner that the American Continental stock was as "safe as CD's".

Shearson answered the Third-party Claim of Grellner and denied the allegations. Shearson denied that Ruppert misrepresented facts concerning American Continental. Shearson also asserted that internal guidelines for monitoring trading activity were followed by Shearson and that these guidelines were put into effect to limit trading in American Continental due to the concentration level of this stock with customers of the Clayton, Missouri, Shearson Branch Office. During October 1988, five purchases in American Continental were made by Ruppert for his customers. Shearson's compliance office directed that these trades be cancelled. Two of the trades were for Grellner's account. When Grellner complained to Shearson, the 6000 shares were reinstated to his account with the permission of Shearson's compliance department.

Shearson Cross-claimed against Ruppert for indemnity in the event an award was entered in favor of Grellner.

Ruppert did not answer Shearson's cross-claim.

B.C. Christopher answered Grellner's Counterclaim and denied that it engaged in market manipulation of American Continental. B.C. Christopher denied that Grellner's transactions in American Continental were unsuitable and asserted various affirmative defenses including, but not limited to, ratification, estoppel, waiver and that Grellner's Counterclaim failed to state a Claim upon which relief could be granted.

Grellner filed an Amended Answer, Amended Counterclaim and Amended Third-party Claim in which he asserted that the losses sustained in his account were the direct result of fraud, deceit and improper conduct of B.C. Christopher, Shearson and Ruppert. As a consequence thereof, Grellner asserted he owed nothing to B.C. Christopher.

B. C. Christopher answered Grellner's amended counterclaim and denied the allegations contained therein.

Shearson answered Grellner's amended counterclaim and third-party claim and denied the allegations contained therein. Shearson also asserted a third-party claim against Stifel, Nicolaus & Company, Inc. ("Stifel") and a counterclaim against B. C. Christopher. Shearson asserted that to the extent any liability was incurred by Shearson, such liability was due to acts or misconduct of Stifel and/or B.C. Christopher.

Stifel answered the third-party claim of Shearson and denied any wrongdoing pertaining to Grellner's purchases at Stifel.

Stifel filed an amended answer to Shearson's third-party claim against Stifel and asserted that the claim should be dismissed based upon the fact that Stifel did not assume certain liabilities of its predecessor company, Rowland, Simon & Company, L.P. when Stifel consummated an asset purchase of Rowland, Simon & Company, L.P.

Stifel also asserted a claim against Grellner for the debit balance remaining in Grellner's account following the margin liquidation of certain shares of American Continental purchased by Grellner in his securities account maintained at Stifel.

Grellner did not answer Stifel's claim against him.

#### **RELIEF REQUESTED**

B.C. Christopher requested damages of \$16,056.04, plus interest and for such other relief as may be appropriate under the circumstances.

Grellner requested dismissal of the Claim asserted against him by B.C. Christopher, an award against Shearson, Ruppert and B.C. Christopher of his losses sustained in the sum of \$226,081.04, interest on margin for \$50,000, lost investment opportunity of \$100,000, damages for emotional distress of \$200,000 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 Grellner asserted against him and an award to him of his expenses

and attorney's fees.

Shearson requested dismissal of Grellner's Third-party Claim or in the alternative requested indemnity from Ruppert by way of a Cross-claim against Ruppert in the event an award was entered in favor of Grellner.

Ruppert did not file an answer to the cross-claim asserted against him by Shearson.

B.C. Christopher requested dismissal of Grellner's Counterclaim and requested alternatively a set off of its Claim plus pre-judgment and post-judgment interest.

Grellner's Amended Counterclaim and Third-party Claim requested actual damages of not less than \$400,000 for losses resulting from American Continental, \$500,000 for emotional distress, punitive damages of \$2,000,000, interest, costs, attorney's fees and such other relief as may be just and proper.

Stifel requested dismissal of Shearson's third-party claim against it and requested an award against Grellner of the debit balance remaining in Grellner's account at Stifel in the amount of \$6409.00 plus the \$200.00 filing fee for the arbitration.

Grellner did not request affirmative relief from the arbitrators by way of an answer to Stifel's claim against him.

#### OTHER ISSUES CONSIDERED & DECIDED

Respondent, Stifel Nicolaus did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure. Since Stifel, Nicolaus answered the claim, appeared and testified at the hearing through witnesses and counsel it is bound by the determination of the arbitration panel on all issues submitted.

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.

#### 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. Grellner is liable for and shall pay to B.C. Christopher in favor of its claim against him, the sum of Nineteen Thousand Five Hundred Sixty Two dollars and Ninety-Seven cents (\$19,562.97);

2. Grellner's Counterclaim asserted against B.C. Christopher is denied and dismissed;

3. Grellner is liable for and shall pay to Stifel Nicolaus in favor of its Cross-claim against him, the sum of Six Thousand Six Hundred Nine dollars and no cents (\$6,609.00);

4. Shearson and Ruppert are jointly and severally liable for and shall pay to Grellner, in favor of his Third-party Claims against them, compensatory damages in the amount of Ninety Five Thousand dollars and no cents (\$95,000.00);

5. Grellner's Claims against Shearson and Ruppert for emotional distress and punitive damages are specifically denied and dismissed in their entirety;

6. Grellner's counterclaim against B. C. Christopher is denied and dismissed in its entirety;

7. All other claims asserted by Grellner against any party not otherwise enumerated herein are specifically denied and dismissed in their entirety;

8. Shearson's Cross-claim asserted against Ruppert is denied and dismissed in its entirety;

9. Shearson's Third-party Claim asserted against Stifel is denied and dismissed in its entirety; and,

10. 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. B. C. Christopher is assessed additional Forum Fees in the amount of \$3500.00.

Grellner is individually assessed additional Forum Fees in the amount of \$4000.00 and \$250.00 for the non-refundable filing fee payable to the NASD to assert his counterclaim.

Stifel is not assessed any additional Forum Fees but is assessed the balance of the third-party claim filing fee in the

amount of \$300.00.

Shearson is assessed additional Forum Fees in the amount of \$4000.00 and is also assessed non-refundable filing fees in the amount of \$500.00. These fees were not paid to the NASD when Shearson filed its cross-claim and third-party claim.

Ruppert is not assessed any additional Forum Fees.

Additional Forum Fees or non-paid filing fees assessed to the parties by the arbitration panel are payable to the National Association of Securities Dealers, Inc.

Panel Members Concurring

Dated:

April 24, 1992

/S/ George W. Kasserman  
George W. Kasserman, Esq.  
Presiding Chair

April 25, 1992

/S/ Leah Balk  
Leah Balk  
Public Arbitrator

April 24, 1992

/S/ William Martin  
William Martin  
Industry Arbitrator

Date award served by the NASD: April 27, 1992