

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Leroy E. Spires

and

90-00470

Name of Respondents

Shearson Lehman Brothers, Inc.
Robert G. Clark

REPRESENTATION OF PARTIES

Claimant was represented by John C. Augustine, Esq. of Saegert, Augustine & Lynch, P.C., Austin, Texas.

Respondents were represented by Harry T. Walters, Esq. of Shearson Lehman Brothers, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about February 13, 1990. Claimant's Submission Agreement signed on February 5, 1990.

Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Robert G. Clark on or about May 18, 1990. Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on May 11, 1990 by Harry T. Walters.

HEARING INFORMATION

A pre-hearing conference was held on August 7, 1992 for one (1) session presided over by James Tipton.

The hearing was held on Tuesday, September 1, 1992 for three (3) sessions, Wednesday, September 2, 1992 for three (3) sessions and Saturday, September 26, 1992 for three (3) sessions in Dallas, Texas for a total of nine (9) hearing and one (1) pre-hearing sessions.

CASE SUMMARY

Claimant alleged that Robert Clark and Shearson Lehman Hutton, Inc. n/k/a Shearson Lehman Brothers, Inc. (collectively as "Respondents") made material misrepresentations to him and placed him in unsuitable investments. Claimant specifically alleged that Respondent Clark was entrusted with the proceeds

from an injury settlement from which he was to receive a monthly distribution in the amount of \$4,000.00 without disturbing the corpus of the principal amount deposited. Claimant alleged that he was assured by Respondents that this objective could and would be met. Claimant further alleged that during the period of their management of his funds, Respondents failed to disclose that earnings generated by the principal amount were insufficient to support the monthly distributions and further failed to disclose that funds were being taken from principal. Claimant alleged that Respondents activities constituted violations of the Texas Deceptive Trade Practices-Consumer Protection Act, breach of contract, breach of express or implied warranties, and fraud.

Respondents stated that the Claimant was given information about a variety of investments and those investments were discussed at length with the Claimant. Respondents stated that the Claimant chose the investments for his account after those discussions. Respondents denied the allegations that they guaranteed a return of \$4,000.00 per month from the principal. Respondents also asserted the following affirmative defenses: the claims asserted fail to state a claim upon which relief may be granted, estoppel, Respondents did not have the requisite intent, knowledge or scienter to violate the securities laws, and that the investments were suitable for the Claimant.

RELIEF REQUESTED

Claimant requested an award in the amount of \$167,268.35, exemplary damages, attorney's fees, interest and costs.

Respondents requested that the claims asserted in this matter be dismissed in their entirety and that costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Robert G. Clark 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 (the "Code") and having answered the claim, appeared and testified at the hearing 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 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 original(s) remain on file with the NASD.

AWARD

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

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.


FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall refund the hearing session deposit in the amount of \$550.00 previously deposited with the NASD by the Claimant. Respondent Shearson Lehman Brothers, Inc. shall pay to the NASD the sum of \$7050.00 as forum fees. Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

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

Dated:

October 7, 1992



Mark A. Myrin, Esq.
Presiding Chair
Public Arbitrator

J. D. Hall
Public Arbitrator

James M. Tipton
Industry Arbitrator

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Dated:

Mark A. Myrin, Esq.
Presiding Chair
Public Arbitrator

10-7-92

J. D. Hall
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Public Arbitrator

James M. Tipton
Industry Arbitrator

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Dated:

Mark A. Myrin, Esq.
Presiding Chair
Public Arbitrator

J. D. Hall
Public Arbitrator

Oct. 14, 1992

James M. Tipton
Industry Arbitrator