

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimants

Charles & Frances Rodgers

90-01229

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimants: Brian Barbin, Esq. of Elliot, Bray & Riley.

For Respondent: Philip Murren, Esq. of Ball, Skelly, Murren & Connell.

CASE INFORMATION

Statement of Claim filed: May 1, 1990.

Claimants' Submission Agreement signed on: March 21, 1990.

Amendment to Statement of Claim filed on: April 29, 1991.

Statement of Answer and Motion to Dismiss filed by Respondent Shearson Lehman Hutton, Inc. on: August 7, 1990.

Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed on: August 7, 1990.

HEARING INFORMATION

Hearing Dates/Sessions: March 12, 1992, 2 sessions
March 13, 1992, 2 sessions
April 16, 1992, 2 sessions
April 27, 1992, 2 sessions
April 28, 1992, 2 sessions
May 04, 1992, 2 sessions
May 05, 1992, 2 sessions
June 05, 1992, 2 sessions
June 06, 1992, 2 sessions

Hearing Location: NASD offices located in Philadelphia, PA.

CASE SUMMARY

Claimants Charles & Frances Rodgers ("Claimants") alleged that Stanley Lazusky ("Lazusky"), a former employee of Respondent Shearson Lehman Hutton, Inc. ("Shearson") began investing Claimants monies' on margin without Claimants' consent. Claimants further alleged that Lazusky resigned from Respondent Shearson on August 17, 1987 and began working for Legg Mason Wood Walker, Inc. ("Legg Mason") and he advised Claimants to transfer their accounts to Legg Mason and on August 28, 1987, Claimants began authorizing Respondent Shearson to transfer all accounts to Lazusky at Legg Mason. Claimants further alleged Respondent Shearson refused to transfer Claimants' accounts and continued to solicit Claimants' accounts to retain the right to Claimants' future commissions even after Respondent Shearson, Legg Mason and Lazusky agreed that each could solicit Claimants' account. Claimants further alleged Respondent violated contractual obligations owed to Claimants by intentionally delaying the transfer of assets to Legg Mason which contributed to Claimants' losses.

Respondent maintained that the only contractual agreements between Claimants and Respondent are specified in the Client Agreements, which make no reference to any "obligation" imposed on Respondent which remotely resemble the "obligations" which Claimant allege Respondent has violated. Respondent maintained that Shearson and Legg Mason executed a Settlement Agreement, settling the disputes between them with respect to Lazusky's solicitation of Shearson clients for transfer of their account to Legg Mason, which stated any transfer of account forms before the date of the agreement were void and all the transfer requests were before the settlement.

RELIEF REQUESTED

Claimants requested \$400,000 in compensatory damages.

Respondent requested that all claims be dismissed and Respondent be awarded reasonable costs and such other relief as may be just and equitable.

AWARD

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

1. All claims by Claimants be and hereby are denied in all respects;
2. The parties shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

18 sessions x \$750 = \$13,500 = \$13,500 minus \$1000 hearing session deposit = \$12,500 net due.

Claimants be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$5750 to represent forum fees.

Respondent be and hereby is liable and shall pay to the NASD the sum of \$6750 to represent forum fees.

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

Concurring Arbitrator's Signature:

Name

Public/Industry


Vernon C. Walker

Industry Arbitrator

Date of Decision: August 11, 1992

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Concurring Arbitrator's Signature:

Name

Public/Industry


Roy B. Steenhoff

Public Arbitrator

Date of Decision: August 11, 1992

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Concurring Arbitrator's Signature:

Name

Public/Industry


Joseph L. Farrell, Jr., Esq.
Chairman

Public Arbitrator

Date of Decision: August 11, 1992