



NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

CHARLES H. EDEN, JR. as Executor of the Estate
Claimant of Harriet C. Roberts
v.

CASE NO. 90-01599

SHEARSON LEHMAN BROTHERS, INC.
STEPHEN PRESCOTT,
Respondents

REPRESENTATION

For Claimant: F. Albert Starr, Esq.

For Respondent: Robert D. Hillman, Esq. of Bingham, Dana & Gould

CASE INFORMATION

Statement of Claim filed: September 5, 1990.

Claimant's Submission Agreement signed: October 31, 1990.

Joint Statement of Answer filed by Respondents, Shearson Lehman Brothers, Inc. and Stephen Prescott, on: July 8, 1991.

Respondent, Shearson Lehman Brothers, Inc.'s, Submission Agreement signed: May 21, 1991.

Respondent, Stephen Prescott's, Submission Agreement signed: July 15, 1991.

HEARING INFORMATION

Hearing Date/Sessions: October 15, 1991 - Two sessions.

Hearing Location: Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that Respondents failed to timely liquidate an account owned by the late Harriet C. Roberts upon the instructions of claimant Charles H. Eden, Jr. as executor of her estate and imposed "back end" liquidation fees upon the sale of shares of two Shearson mutual funds without warning Mr. Eden such fees would be imposed on sale.

Respondent alleged that the account in question was liquidated as promptly as possible after Mr. Eden produced required documentation

(including a so-called "non-resident" affidavit) of his authority to act as executor of Ms. Roberts' estate.

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RELIEF REQUESTED

Claimant requested damages in the amount of \$11,960.52 attributable to the improper imposition of liquidation fees and \$6,457.97 attributable to delayed liquidation of the account.

OTHER ISSUES CONSIDERED AND DECIDED

On October 7, 1991, Claimant who was now represented by counsel filed an amended Statement of Claim through counsel. Respondents filed objection to the amended claim. This arbitrator permitted the filing of the amended claim to the extent it sought no damages greater than those sought through the original claim and relied on identical theories of recovery.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions filed on October 21, 1991, by the Respondents and on October 25, 1991, by the Claimant, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the agreement set forth in the post-hearing pleadings, damages are awarded for the Claimant and against Shearson Lehman Brothers, Inc. in the amount of \$11,960.52.

2. No award is made on the claim for damages for delayed liquidation. On the record before me, (in view of what appears to be the failure of both the Claimant and the Respondent to maintain records) it is impossible to determine either when Respondents made demand for documentation from Mr. Eden, or when such documentation was delivered to Shearson prior to actual liquidation in January, 1990. The arbitrator further states it cannot be determined whether or if any loss resulted from delayed liquidation net of distributions received in the account prior to liquidation.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and any deposits previously paid shall be applied to the fees assessed.

1. The NASD has received and shall retain \$100.00 non-refundable filing fees paid by the Claimant;

2. The NASD has received and shall retain the \$300.00 hearing session deposit paid by the Claimant;

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3. Claimant is assessed a \$100 non-refundable fee for filing a claim with the National Association of Securities Dealers.

4. Forum fees in the amount of \$600 for two hearings at \$300 per session are assessed against Shearson Lehman Brothers, New York, with Shearson to reimburse Claimant the \$300 already paid.

Fees in excess of those to be reimbursed to Claimant are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature



Edward R. Wiest

Sole Arbitrator

Date of Decision:

Dated by the NASD: November 7, 1991