

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Charles B. Drake, Trustee
Drake Construction Co.
Drake Construction Co. Profit Sharing Plan
Claimants

vs.

Case # 90-1696

Shearson Lehman Hutton, Inc.
Respondent

ARBITRATION AWARD

REPRESENTATION

1. Claimants were represented by Mr. Charles B. Drake, Trustee of the Profit Sharing Plan and President of Drake Construction Co.
2. Respondent was represented by Louise Matte, Attorney at Law with the firm of Peterson, Dillard, Young, Self & Asselin.

CASE INFORMATION

3. On June 8, 1990, Mr. Charles B. Drake, President of Drake Construction Company filed a letter complaint with the NASD concerning the claims in this case.
4. On July 10, 1990, Mr. Charles B. Drake on behalf of Drake Construction Co., Profit Sharing Plan executed a submission agreement for arbitration in this case.
5. On October 3, 1990, Sarah Ann Ford, Attorney at Law with the firm of Peterson, Dillard, Young, Self & Asselin, for respondent Shearson Lehman Brothers, Inc., wrote an answer to the complaint of Mr. Drake, addressed to the NASD.

6. On June 25, 1991, David C. Prince, Vice President of Shearson Lehman Brothers, Inc. executed a submission agreement for arbitration in this case.

HEARING INFORMATION

7. The hearing in this case was commenced and completed on September 17, 1991. The case was heard in ONE arbitration session.

8. The hearing in this case was held at the NASD office at 3490 Piedmont Rd., NE, Suite 500, One Securities Center, Atlanta, Georgia 30305.

CASE SUMMARY

9. CLAIMANTS' ALLEGATIONS and ISSUES RAISED:

- *Respondent improperly managed the account, not selling falling stocks in order to hide losses.

- *Losses on 8 of 23 stocks should be borne by respondent, rather than investor.

- *Respondent invested in speculative stocks, contrary to desires of investor-claimant.

- *Respondent did not receive adequate return on investment.

- *(Raised for first time at hearing) Signature on an information form showing objectives was forged.

10. RESPONDENT'S ALLEGATIONS:

- *Claimant wanted better return than he had been getting on more conservative investments; claimant accepted more risk and speculation.

- *Claimant gave discretionary authority to a broker for respondent.

- *The investment program claimant embarked on was Not premised on short term holding, even though short term holding was common.

- *If claimant had liquidated all holdings on the date he took the account from respondent, he would have had a \$3500 profit on the account.

*Claimant decided to wait and see if his holdings would become profitable; they deteriorated and the resulting loss is his own responsibility from his own decision making and timing.

*The investment program the claimant entered in was within his investment objectives; it was suitable to his investment acumen.

*The claim is defeated by the defenses of
assumption of risk
laches
waiver
estoppel and
ratification.

*Over the life of the account, claimants' investments reaped considerable profits and growth.

*Stocks purchased for the investor were not speculative.

RELIEF REQUESTED

11. Claimants requested the following relief:

*\$1229.34 for losses on stock sold shortly after transfer of the account from respondent.

*Plus whatever loss is shown at arbitration on the remaining stocks held by claimant.

*Plus 1/3 of the total losses as punitive damages, or whatever is deemed fair during the hearing.

Note: On June 6, 1990 claimant saw a \$17742.85 loss on stocks he was still holding. He closed his Shearson account on October 27, 1989 when liquidation would have resulted in a \$3500.00 profit (see end of 1st paragraph on page 3 of respondent's answer on October 3, 1990).

12. Respondent requested dismissal of the claim.

AWARD

13. After considering the pleadings, the testimony and the evidence and argument of the parties and their counsel, if any, presented at the hearing (there were no post hearing submissions), the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

13a. There is no evidence of mismanagement of the account.

13b. The investments were sound and within the objectives of the investor.

13c. The losses would have been avoided but for the actions of the claimant.

13d. The investor-claimant was satisfied with the services and profits from investments with respondent, except for the investments he removed from claimant, to his own loss.

13e. There does appear to be a forgery but no damage or violation of investor objectives appears to have resulted therefrom.

13f. The losses appear to be of the claimants' own making and respondent cannot be responsible for them.

13g. The stocks in the claimants' account were not speculative.

13h. The claim is hereby denied.

FORUM FEES

14. Forum fees paid by claimant shall be retained and claimant is charged to such extent as follows: 1 session x \$400 = \$400 less deposit of \$400.00 leaving a balance due from claimants of \$-0-.

SO AWARDED AND ORDERED THIS OCTOBER 9, 1991.

Chandler Bridges
Chandler Bridges
Sole Arbitrator