

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Tom B. Brock

No. 90-01788

Name of Respondents

John Janeway  
Robinson-Humphrey Company, Inc.  
Shearson Lehman Brothers, Inc.

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REPRESENTATION OF PARTIES

Claimant, Tom B. Brock appeared pro se.

For Respondents: Michael W. Rhodes, Esq., of Lathrop, & Norquist,  
Kansas City, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: June 25, 1990.

Claimant's Submission Agreement signed: September 11, 1990.

Joint Statement of Answer filed by Respondents Robinson-Humphrey &  
Co., Inc. and Shearson Lehman Brothers on or about: May 7, 1991.

Respondent Robinson-Humphrey & Co., Inc.'s Submission Agreement  
signed on: August 29, 1991.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement  
signed on: April 15, 1991.

Statement of Answer of Respondent John Janeway filed on or about:  
July 12, 1991.

Respondent John Janeway's Submission Agreement signed: October 28,  
1991.

HEARING INFORMATION

Hearing date: June 18, 1993. Two (2) sessions.

Hearing Location: Kansas City, Kansas.

CASE SUMMARY

Claimant, Tom B. Brock ("Claimant") alleged the following violations:

1. John Janeway ("Janeway") violated Article III, Section 18 of the NASD Rules of Fair Practice (the "Rules") by executing unauthorized transactions in Claimant's account.

2. Janeway, Robinson-Humphrey Company, Inc. ("RHC") and Shearson Lehman Brothers, Inc. ("SLB") violated Article III, Sections 1 and 18 of the Rules by indicating that the securities involved in this claim were good investments when the same were of a highly speculative nature, and by sending confirmations with respect to securities that had not been ordered by the customer.

3. Janeway, RHC and SLB violated Sections 1 and 19(a), when they failed to deliver stock certificates that had been requested, and when they failed to account for the funds transmitted to them for the purchase of the Shearson Daily Dividend Fund.

4. Janeway, RHC and SLB violated Article 3, Section 2 of the Rules in that: Janeway made unsuitable recommendations for the purchase of securities, or made unauthorized purchases; Respondents recommended the purchase of speculative securities to an uninformed purchaser and made misrepresentations and omissions about such securities; Respondents failed to meet the "know your customer" provisions of the Rules by failing to obtain any background information about the Claimant; and Respondents established a margin account without authority from the Claimant.

5. RHC and SLB violated Article III, Section 27 of the Rules in that there had been a failure to supervise the activities of Janeway.

Claimant generally alleged misrepresentations and omissions, unsuitability, unauthorized trades, and failure to supervise by Respondents Janeway, RHC and SLB. Claimant also alleged violations of Section 10 and Rule 10b-5 of the Securities and Exchange Act of 1934. Claimant's allegations arose out of transactions, during 1986 and 1987, in the following securities: Pre-Paid Legal Services, Inc., common stock; Courier Dispatch Group, Inc.; Envirnsafe Services, Inc.; BEI Holdings, Ltd.; A.L. Williams Corporation; and

Immucor, Inc.

In their Answer, RHC and SLB ("Respondents") denied the allegations contained in the Statement of Claim. Respondents specifically denied any allegation based on violations of the Rules or any applicable federal or state Securities Law. Respondents also asserted that: At all times, Respondents supervised the activities of Janeway; all transactions in Claimant's account had been authorized by, and had been suitable for the Claimant; no misrepresentations or omissions had been made; there has been no fraud, breach of fiduciary duty, breach of any other legal obligation, or violation of federal and state Securities Laws, or any rule or regulation of this organization or any other regulatory organization; and to the extent any claim of Claimant is based upon a claimed violation of any rule or regulation of any self-regulatory organization there can be no private cause of action for any such claimed violation.

For his separate Answer, Janeway denied that he is indebted to Claimant in any sum whatsoever, and to the extent that the allegations in Claimant's Statement of Claim were inconsistent with or otherwise contrary to Janeway's Answer, the allegations were denied in their entirety. In addition, Janeway asserted that: All recommendations made to the Claimant had been suitable based on Claimant's objectives and his financial situation and needs; there had not been any misrepresentations made to the Claimant to induce him to purchase, sell or retain any security; there were no unauthorized transactions in Claimant's account; and Claimant had received confirmations of each transaction and also received statements summarizing the transactions in his account on a monthly basis.

#### RELIEF REQUESTED

Claimant requested that the NASD take immediate action to investigate the claimed violations of the Rules by Janeway, and Respondents. Claimant was also seeking an award of monetary damages in the amount of \$75,000.00.

Respondents requested that the arbitrators rule in their favor and deny the claim of Claimant. Respondents also requested that all costs be assessed against the Claimant.

Janeway requested that the arbitrators rule in his favor and deny the claim of Claimant. Respondent also requested that all costs be assessed against Claimant.

#### OTHER ISSUES CONSIDERED & DECIDED

On February 26, 1993, Respondents made a Motion to Dismiss based on statute of limitations grounds. Claimant's response was filed April 16, 1993. After review of the Motion and the response, and deliberation, the panel denied Respondents' Motion to Dismiss.

At the start of the hearing on June 18, 1993, Arbitrator Patrick Hartigan disclosed, for the record, that his wife works for Smith Barney, and that Smith Barney and Shearson were going to merge in the fourth quarter of 1993. The parties accepted the panel, for the record, after the disclosure had been made.

Further, on June 18, 1993, Respondents renewed their Motion to Dismiss previously filed on February 26, 1993, based on statute of limitations grounds. The panel declined to rule on the motion at that time.

The parties were unable to finish the hearing on this matter by the end of the day on the 18th of June. The parties agreed, and the arbitrators permitted, to make their closing arguments in written form. After the hearing had been concluded, the parties submitted their written closing arguments along with additional evidence. After their review of the closing arguments, the panel declined to admit as part of the record of this arbitration those evidentiary items submitted with the parties closing arguments.

The parties have agreed that the Award in this matter may be executed by 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 originals remain on file with the NASD.

#### AWARD

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

1. Claimant, Tom B. Brock's claims against Respondents John Janeway and the Robinson-Humphrey Company, Inc. are hereby denied and dismissed with prejudice.
2. Respondent Shearson Lehman Brothers, Inc. is liable for, and shall pay to Claimant, Tom B. Brock the sum of \$2,540.00 as full satisfaction for his claims in this arbitration.

#### OTHER COSTS

Each party shall pay its own costs and expenses associated with this arbitration, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

2 hearing sessions x \$500.00 = \$1,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall refund the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,000.00 are assessed against Respondent Shearson Lehman Brothers, Inc.

Pursuant to Sections 43(c) and 30(b) of the Code, the NASD shall retain \$500.00 of the \$1,000.00 postponement fee previously paid to the NASD by Respondent Shearson Lehman Brothers, Inc.

Pursuant to Sections 43(c) and 30(b) of the Code, the NASD shall retain the postponement fee in the amount of \$500.00 previously paid to the NASD by Respondent John Janeway.

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

CONCURRING ARBITRATORS

Dated:

Name:

July 16, 1993

/s/Michael W. Gear  
Michael W. Gear  
Presiding Chair  
Public Arbitrator

July 16, 1993

/s/Alan C. Fite  
Alan C. Fite  
Public Arbitrator

July 15, 1993

/s/Patrick E. Hartigan  
Patrick E. Hartigan  
Industry Arbitrator

Date of Service by the NASD:

7-20-93