

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Bindura Corporation, N.V. & A. Carstens)

Case No. 90-02073

Name of Respondent(s))

Shearson Lehman Brothers, Inc.)

Gaston Rozenwald)

Michael Ghaemis)

Heard before the members of the Arbitration Panel:

Richard A. Freeman, Esq.

Public

Charles H. Brodzki, Esq.

Public

Robert S. Natiss

Industry

REPRESENTATION

Claimants, Bindura Corporation, N.V. ("Bindura") and A. Carstens ("Carstens"), were represented by John E. Dolkart, Esq. and Merrill A. Bookstein, Esq.

Respondents, Shearson Lehman Brothers, Inc. ("Shearson"), Gaston Rozenwald ("Rozenwald") and Michael Ghaemis ("Ghaemis"), were represented by Debra A. Jenks, Esq. of Boose Casey Ciklin Lubitz Martens et al.

CASE INFORMATION

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 27, 1990. Claimants alleged that they were unsophisticated investors with investment objectives of capital preservation, with risk free, fixed income investments; that Respondents, through Ghaemis, made misrepresentations of and omitted to state material facts; failed to explain margin and other risks; took unauthorized control of the account; failed to follow instructions to cease trading; that Respondents' actions constituted breach of fiduciary duty, fraud, violation of Sections 17 and 12(2) of the 1933 Securities Act, Rule 10b-5 of the 1934 Exchange Act, Sections 1 and 2 of the NASD Rules of Fair Practice, and 18 U.S.C. Section 1962(c) (RICO).

In a Statement of Answer filed with the NASD on December 5, 1990, Respondents denied all allegations of wrongdoing and alleged that Claimants' account was handled professionally, properly and in accordance with all laws.

Respondents alleged the affirmative defenses of failure to state a claim; estoppel by knowledge of facts and risks; estoppel by direction and authorization; waiver, estoppel and ratification; no misrepresentations by Ghaemis; failure to mitigate damages; assumption of risk; unforeseen market fluctuations; no punitive damages; bar by statute of limitations; no proximate cause; fictitious damages; bar by comparative fault and lack of due diligence; expressions of opinion not actionable; and, misrepresentations are not material.

RELIEF REQUESTED

Claimants requested damages in the amount of \$95,460.00, interest, punitive damages in the amount of \$250,000.00, RICO damages, attorney's fees, costs and other relief.

Respondents requested dismissal, costs and attorney's fees.

AWARD

On July 22 and 23, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Carstens on August 28, 1990; on July 22, 1991 by Carstens on behalf of Bindura; by Rozenwald on April 8, 1991; by Ghaemis on April 25, 1991; and signed on December 4, 1990 by Linda Yarden on behalf of Shearson.

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

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.
2. Respondents are found liable and shall pay to the Claimants the amount of \$48,139.00, plus interest at the legal rate of 12% per annum to begin on the date of this Award, apportioned as follows:
 - a. Shearson shall pay \$11,505.00;
 - b. Rozenwald shall pay \$4,813.00; and,
 - c. Ghaemis shall pay \$31,821.00.
3. Claimants' requests for attorney's fees, costs, punitive damages and RICO damages are denied.
4. Respondents' requests for attorney's fees and costs are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00). Respondent, Shearson, is hereby assessed \$3,000.00, \$750.00 of which shall be paid directly to the Claimants and \$2,250.00 of which shall be paid to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/S/
Richard A. Freeman, Esq.

/S/
Charles A. Brodzki, Esq.

/S/
Robert S. Natiss

Date of Decision: August 22, 1991