

N.A.S.D. AWARD

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Jesus Meneses)

Case No. 90-02075

Name of Respondent(s))Shearson Lehman Brothers, Inc.)
Gaston Rozenwald)
Michael Ghaemis)Steven D. Elias, Esq.
Richard B. Frost
Bonnie L. Roddenberry, Esq.Public
Industry
PublicREPRESENTATION

Claimant, Jesus Meneses ("Meneses"), was represented by Merrill A. Bookstein, Esq., and John E. Dolkart, Esq.

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

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 27, 1990. Claimant alleged that Respondents were liable for: failing to explain the potential risks of investing on margin in Ginnie Mae's; that Claimant never authorized any leveraged trading; Respondents took unauthorized control over Claimant's account; Ghaemis assured Claimant that the losses would cease; Respondents failed to take any action to prevent further losses; Respondents churned the account; and, Shearson and Rozenwald failed to supervise Ghaemis. Claimant alleged: breach of fiduciary duty; fraud; and violations of the Federal RICO Act.

Respondents, Shearson, Rozenwald and Ghaemis, filed a Statement of Answer with the NASD on December 4, 1990. Respondents denied all allegations of wrongdoing and alleged that Claimant's account was handled properly and in accordance with all laws. Respondents asserted affirmative defenses

including: failure to state a claim; Claimant was aware of the risks involved; estoppel; waiver and ratification; no misrepresentations were made; failure to mitigate damages; assumption of risk; any losses were due to unforeseen market fluctuations; the allegations relating to punitive damages fail to set forth facts sufficient to state a claim for such; the Due Process Clauses of the U.S. and New York Constitutions and New York law preclude a recovery of punitive damages; failure to set forth sufficient facts to establish a claim under the RICO Act; Statutes of Limitations; lack of proximate cause; the purported damages are fictitious; failure to plead fraud with particularity; comparative fault and lack of diligence on the part of Claimant; any representations were statements of opinion and are not actionable; and, any misrepresentations were not material.

RELIEF REQUESTED

Claimant requested damages in the amount of \$90,000.00, plus punitive damages of \$250,000.00, attorney's fees, costs, treble damages of \$270,000.00, plus return of commissions and lost profit.

Respondents requested dismissal of the claim, plus costs and attorneys' fees.

AWARD

On July 31 and August 1, 1991, in Fort Lauderdale, Florida, during hearings lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Meneses, on August 28, 1990 and by Respondents, Rosenwald, on April 8, 1991 and Ghaemis on April 25, 1991 and signed on December 3, 1990 by Linda Yarden on behalf of Respondent, 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, Shearson, Rosenwald and Ghaemis, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$40,000.00 inclusive of interest.
3. Respondent, Ghaemis, is also found liable for breach of fiduciary duty and shall pay to Claimant the further amount of \$60,000.00 inclusive of interest.
4. Claimant's requests for attorney's fees, punitive damages, treble damages, and costs are denied.
5. Respondents' request for attorney's fees and costs is denied.

6. Claimant's claims for fraud and RICO are hereby dismissed.
7. Respondents' Motion to add a Third Party Claim was dismissed due to lack of jurisdiction.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,800.00 (one pre-hearing conference x \$300.00 plus six sessions x \$750.00 per session). Claimant is hereby assessed \$2,400.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof. Respondent, Shearson, is hereby assessed \$2,400.00 payable to the National Association of Securities Dealers, Inc. The NASD shall retain the \$500.00 previously deposited by Respondent, Shearson, in partial satisfaction of such fees.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorneys' fees.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
Steven D. Elias, Esq.

/s/
Bonnie L. Roddenberry, Esq.

/s/
Richard B. Frost

Date of Decision: September 23, 1991