

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Jo-Anne Chasnow

vs.

Case #
90-02573

Name of Respondents

Shearson Lehman Brothers, Inc.
Alexander Arns

REPRESENTATION

For Claimant: James H. Forte, Esq. of Saiber Schlesinger Satz & Goldstein.

For Respondent: Brian F. McDonough, Esq. and Madelyn A. Levy of Shanley & Fisher.

CASE INFORMATION

Statement of Claim filed: September 12, 1990.

Amended Statement of Claim filed: December 14, 1990.

Claimant's Submission Agreement signed on: July 26, 1990.

Joint Statement of Answer filed by Respondents, Shearson Lehman Hutton, Inc. and Alexander Arns, on: May 22, 1991.

Respondent's, Shearson Lehman Hutton, Inc., Submission Agreement signed on: March 27, 1991.

Respondent, Alexander Arns, Submission Agreement signed on: April 01, 1991.

HEARING INFORMATION

Pre-Hearing Conference: September 24, 1991 - one session.

Hearing Date/Hearing Sessions: November 01, 1991 - two sessions.

December 12, 1991 - two sessions.

January 24, 1991 - one session.

Hearing Location: New York, New York.

CASE SUMMARY

Claimant, Jo-Anne Chasnow, alleges that her broker, Alexander Arns, who,

for the relevant period, was employed with Respondent, Shearson Lehman Hutton, Inc., negligently or intentionally failed to honor his commitment to Claimant that he would sell her 6,200 shares of Constellation Bancorp. stock in accordance with her instruction when her stock had dropped two points below its highest value and her later express sell instructions at any price. Claimant further alleges that Respondent Arns advised that while NASDAQ did not permit stop loss orders, he could perform the same function by "watching the stock every day" and by selling the shares immediately if they ever dropped two points below the highest per share price.

Claimant contends that from September 19, 1989 to October 09, 1989, the stock fell from \$37.00 to \$35.00 but Arns failed to follow her instruction because he believed the stock would surge up to \$40.00 per share. As a result of this, Claimant alleges that she did not renew her sell instruction until early December, 1989, when she discovered that the stock had fallen to \$31.50 per share and she then instructed Arns to sell \$120,000 worth of stock so that she could repay her father a loan which he extended so that she could purchase the shares initially. Claimant alleges that Arns failed to honor her instruction. Claimant further alleges that she transferred her account to another broker who sold the shares at a loss of \$78,425.50.

Claimant contends that Respondents violated Section 10(b) of the Securities and Exchange Act of 1934, and Rule 10b-5 promulgated thereto, Sections 12(2) and 17(a) of the Securities Act of 1933 and the New Jersey Uniform Securities Law, NJSA 49:3-52 and 49-3-53. Claimant also alleges common law violations including fraud.

Respondents deny liability and deny the allegations of wrongdoing. Specifically, Respondents deny that Arns agreed to put a stop loss order on Claimant's Constellation stock. Respondents argue that Claimant or her father could have watched the stock as it was traded over NASDAQ and its price was published in the financial page of a major newspaper. Respondents argue that the investment was short term but that once the stocks were delivered to Shearson, Claimant decided not to sell them for an immediate profit, but to hold them in the hope of a bigger profit. Respondents contend that Claimant gave Arns a limit order rather than a market order in late November or early December, 1989 and that Arns could not sell the stock at the limit imposed by Claimant. Respondents argue that Claimant made several transactions during that the period and could have easily given Arns an order to sell her Constellation stock, but she did not.

Respondents interpose eight affirmative defenses.

RELIEF REQUESTED

Claimant requests that the panel award her compensatory damages in the amount of \$148,800.00 or, in the alternative, \$78,425.50; consequential damages; treble damages under NJSA 56:8-19 in the amount of \$446,400 or, in the alternative, \$235,275.90; punitive damages which Claimant estimates to be

about \$250,000.00; interest; attorney's fees and cost of this suit; and, such other and further relief as the NASD Arbitration Panel deems just and proper.

Respondents request that the Claim be dismissed with prejudice and that they be awarded the costs and disbursements incurred in this action.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in 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.

The parties were directed to advise the NASD of their availability by December 13, 1991 for a third hearing. When no response was received from the Claimant, an additional hearing date was scheduled for January 09, 1992, and the parties were so advised by letter dated December 18, 1991. By letter dated January 06, 1992, Claimant requested that the hearing be postponed because he and/or his witnesses were not available. Over the objection of Respondents, Claimant's request for a postponement was granted, a \$750.00 postponement fee was assessed and the hearing was rescheduled for January 24, 1992. Claimant requested that the fee be waived and this Panel denied that request.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions from Claimant dated January 31, 1992 and from Respondents dated February 07, 1992, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Alexander Arns, is hereby liable to the Claimant in the amount of Seventy Eight Thousand Four Hundred and Twenty Five Dollars and Thirty Cents (\$78,425.30);
2. Respondent, Alexander Arns, is hereby liable to the Claimant for interest at a rate of nine percent (9%) from August 1, 1990 to January 24, 1992;
3. The claims asserted against Respondent, Shearson Lehman Hutton, Inc., are denied in its entirety.
4. The claim for consequential damages is denied;
5. The claim for treble damages is denied;

6. The claim for punitive damages is denied;
7. The claim for attorney's fees is denied;
8. The claim for costs is denied.

FORUM FEES

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

1. The NASD has received and shall retain the \$200.00 non-refundable filing fee paid by the Claimant;
2. The NASD has received and shall retain the \$750.00 hearing session deposit paid by the Claimant;
3. Forum fees in the amount of \$3,750.00 five (5) hearing sessions and \$300.00 for one (1) pre-hearing session are assessed and shall be borne equally by the parties;
4. Claimant is assessed \$1,875.00 in forum fees;
5. Respondents are jointly and severally assessed \$1,875.00 in forum fees;
6. Claimant is further assessed \$750.00 for postponement of the January 09, 1992 hearing date. Therefore, the total amount due the NASD by Claimant is \$1875.00.

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

Concurring Arbitrator's Signature

Name


Barry Koch, Esq.

Public - Chairperson

Executed on:

~~Date of Decision:~~

February 20, 1992

Date of Decision: March 2, 1992

6. The claim for punitive damages is denied;
7. The claim for attorney's fees is denied;
8. The claim for costs is denied.

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

Concurring Arbitrator's Signature

Name


Charles E. Walsh

Public.

Executed on:

Date of Decision: 2/19/92

Date of Decision: March 2, 1992

6. The claim for punitive damages is denied;
7. The claim for attorney's fees is denied;
8. The claim for costs is denied.

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

Concurring Arbitrator's Signature
Name


Marvin Lippsett

Industry

Executed on

~~Date of Decision:~~

1/24/92

Date of Decision: March 2, 1992