

N.A.S.D. AWARD-

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

Raymond H. Link and
Joyce L. Link

90-02712

Names of Respondents

Shearson Lehman Hutton, Inc.
and Daniel Zessinger

REPRESENTATION

Claimants were represented by Stanley E. Goldstein, Esq. of Selner, Glaser, Komon, Berger & Galganski, St. Louis, Missouri.

Respondents, Shearson Lehman Hutton, Inc. and Daniel Zessinger were represented by Jerry M. Santangelo, Esq. of Neal, Gerber & Eisenberg, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on September 27, 1990.

Claimants, Raymond H. and Joyce L. Link's Submission Agreement was signed on September 8, 1990.

Respondent, Shearson Lehman Hutton, Inc.'s Submission Agreement was signed on January 28, 1991 by William A. Hohausser.

Respondent, Daniel Zessinger's Submission Agreement was signed on February 21, 1991.

A Joint Statement of Answer was filed with the NASD by Respondents, Shearson Lehman Hutton, Inc. and Daniel Zessinger on March 1, 1991.

HEARING INFORMATION

The hearing dates and number of hearing sessions on each day of hearing were as follows:

July 21, 1992 for one (1) hearing session;
September 1, 1992 for two (2) hearing sessions;
September 10, 1992 for two (2) hearing sessions;
September 11, 1992 for two (2) hearing sessions;
September 18, 1992 for two (2) hearing sessions; and,
September 24, 1992 for two (2) hearing sessions.

All of the hearing sessions above were before the entire arbitration panel except the July 21, 1992 session which was a pre-hearing conference before the panel chairman alone.

The hearing location was St. Louis, Missouri.

CASE SUMMARY

Claimants, Raymond H. and Joyce L. Link, ("Claimants") alleged that Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Daniel Zessinger, ("Zessinger"), while employed by Shearson, engaged in excessive trading, unauthorized trades, and breached their fiduciary duties owed to the Claimants. These allegations arose out of Claimants' account maintained with Shearson.

Claimants contended that they were unsophisticated in the handling and investing of money and in particular, investments in stock options, and therefore, they relied on Respondents' expertise and fiduciary obligations with respect to investment decisions concerning their account. Claimants alleged that Respondents effectuated various securities transactions that were excessive in light of the size and character of their account and the trading objectives of the Claimants. According to Claimants, Respondents made untrue statements of material facts and omitted to state material facts, thereby inducing Claimants to engage in such transactions and/or believe such transactions were proper and appropriate for the Claimants' account.

Claimants maintained that these transactions occurred while Claimants were out of town on a month long vacation. Claimants explained that during this period, they were in daily contact with Zessinger and despite this, Zessinger failed to obtain authorization to execute such transactions and failed to notify Claimants of the transactions. Claimants asserted that Shearson and Zessinger engaged in wrongful conduct and intentionally deceived and defrauded Claimants by taking advantage of Claimants' absence by executing excessive trades while Claimants were not home to receive confirmations and the account statements. In addition, Claimants alleged that Shearson and Zessinger breached fiduciary duties by causing certain Revlon options to be purchased. Claimants contended that Shearson and Zessinger failed to inform Claimants of a known private takeover bid for Revlon and had Claimants been aware of such private takeover bid, they would not have purchased the Revlon calls. Claimants also stated that Shearson and Zessinger were not authorized to purchase Revlon options and by doing so, breached their fiduciary duties and acted contrary to Claimants' specific instructions.

Claimants also argued that Shearson and Zessinger, without verbal or written authorization from Claimants and while Claimants were on vacation, engaged in the unauthorized trading of various Standard and Poor's Calls and WalMart Calls. Lastly, Claimants stated that Shearson and Zessinger negligently failed to execute specifically authorized trades, specifically, Shearson and Zessinger failed to purchase Chrysler Puts. Instead, according to Claimants, Shearson and Zessinger purchased Chrysler Calls and then without authorization, sold said calls and purchased Chrysler Puts.

In their Joint Statement of Answer, Shearson and Zessinger denied all of the allegations contained in the Statement of Claim. Specifically, Shearson and Zessinger alleged that Claimants' trading activity was consistent with their trading objectives and that they directed each trade on an unsolicited basis. In addition, Shearson and Zessinger stated that Mr. Link verified that he had twenty-five years of trading experience in stocks, bonds and options, and verified that he knew and understood the risks of trading in options. Shearson and Zessinger contended that the trading in the Claimant's Account was not excessive when compared to Claimants' prior trading activity. In particular, Shearson and Zessinger explained that the trading activity in the Claimants' Account in the six week period immediately preceding the challenged six week time frame exceeded the trading activity complained of as excessive and

unsuitable. Shearson and Zessinger also denied that the trades were unauthorized. Shearson and Zessinger insisted that Claimants authorized the Revlon Call transactions and that the Standard and Poor's options purchases were suitable, as Claimants had bought and sold similar stock market index options right from the start of their options trading at Shearson.

Concerning the WalMart Calls, Shearson and Zessinger denied that there was any attempt to cover an error and it was Claimants who changed strategies and shorted the stock with the anticipation that WalMart's stock would not continue its meteoric rise. Shearson and Zessinger also maintained that Claimants had changed their mind in regard to the Chrysler Calls, but it was too late to change the order so it went through as placed. Lastly, Shearson and Zessinger asserted that Claimants failed to sustain any showing of out-of-pocket loss in their account, and they cannot seek to recover in hindsight for unprofitable trades and ignore the most profitable ones which were part of the same trading strategy.

RELIEF REQUESTED

Claimants requested an award of \$50,933.00 and \$200,000 in punitive damages plus attorneys' fees, costs and expenses.

Shearson and Zessinger requested that the Statement of Claim be dismissed with prejudice and award Shearson and Zessinger further relief deemed appropriate under the circumstances.

OTHER ISSUES CONSIDERED & 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.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, the parties' respective hearing memoranda and the post-hearing submissions on the issue of attorney's fees, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel finds jointly and severally against Shearson and Zessinger in favor of Claimants, in the cumulative amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). This amount is broken down into the following categories:

- a). \$50,000.00 as and for compensatory damages sustained; and,
- b). \$50,000.00 as and for punitive damages.

In making the award of punitive damages, the panel considered the parties' respective hearing memoranda and found that under the cases cited by the parties, the panel has the authority to make an award of punitive damages and accordingly enters such an award given the proofs advanced at the hearing.

2. The Claimants' request for attorney's fees is denied and dismissed in its entirety.

3. Other than Forum Fees which are addressed below, the parties shall each bear their own costs and expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously deposited with the NASD by Raymond H. and Joyce L. Link. Shearson and Zessinger are to jointly and severally directed to reimburse Claimants for their deposits with the NASD.

Additional Forum Fees in the amount of \$7050.00 are assessed against Shearson. Forum Fees were assessed on the basis of \$750.00 per hearing session for ten (10) hearing sessions and \$300.00 for the single session pre-hearing conference. Additional Forum Fees assessed to the parties by the panel are payable to the NASD.

By the Arbitration Panel:

Dated:

/S/ Marvin Klamen
Marvin Klamen
Public Arbitrator
Chairperson

January 15, 1993

/S/ Bryan Goetz
Bryan Goetz
Public Arbitrator
Panelist

January 15, 1993

/S/ Joan W. Fox
Joan W. Fox
Industry Arbitrator
Panelist

January 14, 1993

Date Award Served by the NASD: January 15, 1993