

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

JAMES H. OLIVER

Claimant(s)

90-02842

and

SHEARSON LEHMAN BROTHERS, INC. f/k/a
SHEARSON LEHMAN HUTTON, INC. and
M.E. "DOC" COOK

Respondent(s)

REPRESENTATION OF PARTIES

Claimant James H. Oliver was represented by John K. Eggars, Esq. of Abramson & Fox, Chicago, Illinois.

Respondents Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman Hutton, Inc. and M.E. "Doc" Cook were represented by Thomas M. Knapper, Esq. of Neal, Gerber & Eisenberg, Chicago, Illinois.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 29, 1990, and as later amended in March of 1991, Claimant James H. Oliver ("Oliver") alleged that Respondent M.D. "Doc" Cook ("Cook"), while employed by or acting as an agent of Respondent Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman Hutton, Inc. ("Shearson"), misrepresented that he had definite inside information regarding a takeover bid for the First City Bank Corporation of Texas and the Bayly Corporation in order to induce Oliver to purchase stock in the corporations. Based upon the statements made by Cook, Oliver purchased stock in both corporations in early 1987, but no takeover bids occurred, the stock declined in value and Oliver lost money as a result of his reliance on Cook's statements. Oliver alleged that Cook's statements were made fraudulently, recklessly and without a reasonable basis, therefore violating SEC Rule 10b-5; the Texas Deceptive Trade Practices - Consumer Protection Act; Section 1 of Article III of the NASD Rules of Fair Practice; Section 8-1118 of the Securities Act of Nebraska and the Respondent's duty not to act negligently with respect to Oliver. In addition, Oliver alleged that Shearson violated its duty to supervise Cook which is required by Section 27 of Article III of the NASD Rules of Fair Practice.

In a Statement of Answer filed with the NASD in December 27, 1990, Respondents Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman Hutton, Inc.

and M.E. "Doc" Cook denied the material allegations of the claims, alleging as follows:

1. the alleged misrepresentations were not made;
2. Oliver was a sophisticated investor, banker, former state bank examiner and member of several banking associations and could not conceivably have reasonably relied upon the misrepresentations if made by Cook;
3. any damages to which Oliver might otherwise be entitled are reduced or eliminated because of his failure to effectively repudiate these purchases at such a point in time as an individual of his intellect, sophistication and experience in the securities markets would have done;
4. the claim or a portion thereof is barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimant James H. Oliver initially requested entry of an award against Respondents in the amount of \$165,050.00, plus interest at the rate of 6% and attorneys' fees pursuant to Section 8-1118 of, the Securities Act of Nebraska. The relief was later amended to include a request for treble damages in the amount of \$495,150.00 plus attorneys' fees pursuant to the Texas Deceptive Trade Practices - Consumer Protection Act.

Respondents Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman Hutton, Inc. and M.E. "Doc" Cook requested that the Statement of Claim be dismissed and denied in its entirety.

OTHER ISSUES

At the hearing, Claimant moved to amend his Claim to include as a basis of his claim Section 18 of Article III of the NASD Rules of Fair Practice. After review of the statements made by counsel for the parties, the motion was granted and the hearing proceeded.

PROCEDURAL MATTERS

On July 11, 1991 in Chicago, Illinois during a hearing lasting a total of three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 4, 1990 by Claimant James H. Oliver, on December 7, 1990 by Neil A. Sussman on behalf of Respondent Shearson Lehman Brothers, Inc., f/k/a Shearson Lehman Hutton, Inc. and on July 11, 1991 by Respondent M.E. Cook, Jr.

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 original(s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted herein shall be and hereby are dismissed and denied in their entirety;
2. Each party shall bear its own costs, expenses and attorneys fees' incurred in this matter; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant James H. Oliver. Claimant James H. Oliver shall pay to the NASD the sum of \$750.00 and Shearson Lehman Brothers, Inc. shall pay to the NASD the sum of \$1,500.00 as additional forum fees.

Dated:

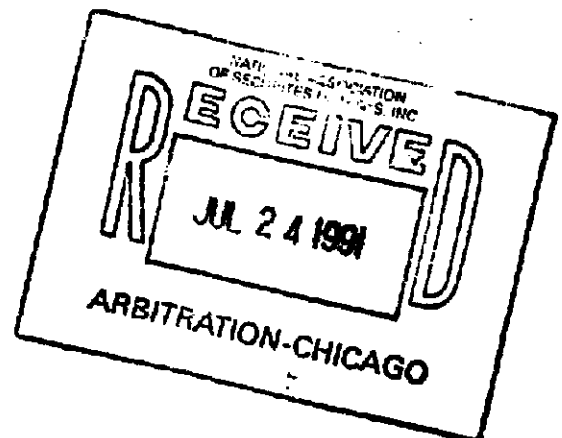
Jerome M. Katz, Esq.
Presiding Chair
Public Arbitrator

Stephen W. Balek, Esq.
Public Arbitrator

7-23-91

Frederic M. Rizzo
Frederic M. Rizzo
Industry Arbitrator

Served by NASD: Aug. 5, 1991



AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted herein shall be and hereby are dismissed and denied in their entirety;
2. Each party shall bear its own costs, expenses and attorneys fees' incurred in this matter; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant James H. Oliver. Claimant James H. Oliver shall pay to the NASD the sum of \$750.00 and Shearson Lehman Brothers, Inc. shall pay to the NASD the sum of \$1,500.00 as additional forum fees. pay JN

Dated:

7/26/91

Jerome M. Katz
 Jerome M. Katz, Esq.
 Presiding Chair
 Public Arbitrator

Stephen W. Balek, Esq.
 Public Arbitrator

Frederic M. Rizzo
 Industry Arbitrator

Served by NASD: Aug. 5, 1991

90-2842

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted herein shall be and hereby are dismissed and denied in their entirety;
2. Each party shall bear its own costs, expenses and attorneys fees' incurred in this matter; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant James H. Oliver. Claimant James H. Oliver shall pay to the NASD the sum of \$750.00 and Shearson Lehman Brothers, Inc. shall pay to the NASD the sum of \$1,500.00 as additional forum fees.

Dated:

7/29/91

Jerome M. Katz, Esq.
Presiding Chair
Public Arbitrator

Stephen W. Balek
Stephen W. Balek, Esq.
Public Arbitrator

Frederic M. Rizzo
Industry Arbitrator

Served by NASD: Aug. 5, 1991