

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

Seth Justman

vs.

Case #
90-02937Name of RespondentsShearson Lehman Brothers, Inc.
Kathleen Hegenbart

REPRESENTATION

For Claimant, Seth Justman, Thomas Butters, Esq. of Cullen & Butters.

For Respondents, Shearson Lehman Hutton, Inc. and Kathleen Hegenbart, John R. Synder, Esq. of Bingham Dana & Gould.

CASE INFORMATION

Statement of Claim filed: October 18, 1990.

Claimant's Submission Agreement was signed on: October 12, 1990.

Joint Statement of Answer filed by Respondents on: February 5, 1991.

Respondent's, Shearson Lehman Hutton, Inc., Submission Agreement signed on:
June 11, 1991.Respondent's, Kathleen Hegenbart, Submission Agreement signed on: May 21,
1991.HEARING INFORMATION

Hearing Dates/Hearing Sessions:	July 18, 1991	- 2 Sessions
	July 19, 1991	- 2 Sessions
	September 9, 1991	- 2 Sessions
	September 10, 1991	- 2 Sessions
	October 4, 1991	- 2 Sessions
	November 22, 1991	- 2 Sessions
	December 6, 1991	- 2 Sessions
	January 17, 1992	- 1 Session
	January 27, 1992	- 2 Sessions
	January 28, 1992	- 2 Sessions
	April 15, 1992	- 2 Sessions.

Hearing Location: Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that he was a writer and a keyboard player for the G. Gails Band which enjoyed significant success in the early 1980's which diminished by the end of 1983. Claimant also alleges that he in 1985 he opened discretionary accounts with Shearson Lehman Brothers, Inc., now known as Shearson Lehman Hutton, Inc. with \$1,050,000.00 and transferred his retirement accounts to the firm. Claimant further alleges that his account executive was Kathleen Hegenbart.

Claimant further alleges that at the time he opened his account with Respondents, he was an unsophisticated investor who relied upon the recommendations of Respondents. Claimant further alleges that he informed Respondents that his investment objectives were safety and the preservation of his capital.

Claimant further alleges that following the opening of the account with Shearson, Respondents recommended that Claimant invest \$400,000 in Shearson managed stock account; \$416,550 in Shearson packaged limited partnership ventures which consisted of real estate investments, \$200,000 in publicly traded limited partnerships and \$50,000.00 in commodities limited partnership. Claimant also alleges that Respondents sold the bonds which he had and purchased new municipal bonds, Shearson mutual funds and certificates of deposit. Claimant further alleges that Shearson earned \$100,000.00 in commissions during the first 48 months the account was opened.

Claimant states that Respondents represented that the Shearson packaged limited partnership ventures were low risk and conformed to his investments objectives of safety and preservation of capital. Claimant contends that this investment was high risk and speculative and were contrary to Claimant's stated investment objectives. Claimant further alleges that Respondents knew that their representations were false, and that Claimant relied on them in agreeing to the investments. Claimant contends that these partnerships now have a value of less than \$90,000.00 and that he received a total of \$73,000.00 distributions in the last 5 years.

Claimant further states that he purchased 10,000 shares of a publicly traded real estate limited partnership for \$100,000.00 based upon Respondents' representation that it was a low risk investment that also conformed to his investment objective. Claimant contends that the investment was speculative and unsuitable and that he sustained a loss of \$30,000.00.

Claimant further alleges that he repeatedly requested that Respondents liquidate the managed stock account. Claimant contends that shortly after the stock market crash of 1987, Respondents liquidated his account which resulted in a loss to Respondent.

Claimant alleges that Respondents violated Sections 10(b) and 20 of the Securities and Exchange Act of 1934, Article III Sections 1, 2, 18 & 27 of the NASD Rules of Fair Practice, NYSE Rules 401, 405 and 408. Claimant also

alleges common law fraud claims, breach of contract, breach of fiduciary duty and negligence.

Respondents deny liability and each and every allegation of wrongdoing set forth in the Statement of Claim. Respondents deny that the account was a discretionary. Respondents assert nine affirmative defenses.

Respondents contend that this was not Claimant's only account. Respondents allege that Claimant informed Ms. Hegenbart his estimated annual income of \$200,000.00, a net worth in excess of \$1 million and that he was receiving residuals from certain music interests he maintained. Respondents allege that Claimant wants investment vehicles which would offset the effects of inflation and offer the potential for growth of his principal. Respondents contend that Claimant informed them that he had familiarity in investing in real estate and felt comfortable in pursuing real-estate based investments.

Respondents also contend that Claimant received a prospectus on each of the investments and that each investment was discussed with Claimant at length prior to the authorization of each purchase. Respondents also contend that besides having experience in investing in real estate, Claimant relied upon the counselling, judgment and participation in investment decisions of his business manager and accountant.

Respondents further state that Claimant's portfolio was diversified and that less than twenty percent (20%) of the assets were invested in real estate. Respondents further argue that the loss sustained by Claimant was caused by the decline in value due to market conditions and not the fault of Respondents.

RELIEF REQUESTED

Claimant requests an award of compensatory damages in the amount of \$332,000.00, a reasonable return on the \$66,500.00 that was invested in the limited partnership, damages to be determined for the excessive commissions charged by Respondent and from the loss caused by the changes in the bond portfolio, damages in the amount of \$140,000.00 for Respondents' failure to liquidate the stock account as requested, a reasonable return on the \$140,000.00 loss, interest, costs, attorney's fees and punitive damages in the amount of \$1,000,000.00.

Respondents request that the Statement of Claim be dismissed in its entirety.

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.

AWARD

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

1. Respondents, Shearson Lehman Hutton, Inc. and Kathleen Hegenbart, are hereby liable to Claimant for a total amount of **THREE HUNDRED AND THIRTY NINE THOUSAND TWO HUNDRED AND FORTY NINE DOLLARS AND ZERO CENTS (\$339,249.00)** which shall be paid as outlined in paragraphs 2 and 3;
2. Respondent, Shearson Lehman Hutton, Inc., is hereby liable to Claimant for ninety percent of the total amount awarded, **THREE HUNDRED AND FIVE THOUSAND THREE HUNDRED AND TWENTY FOUR DOLLARS AND TEN CENTS (\$305,324.10)**;
3. Respondent, Kathleen Hegenbart, is hereby liable to Claimant for ten percent (10%) of the total amount awarded, **THIRTY THREE THOUSAND NINE HUNDRED AND TWENTY FOUR DOLLARS AND NINETY CENTS (\$33,924.90)**;
4. Interest is included in the total award of \$339,249.00;
5. The claim for punitive damages is denied;
6. The claim for attorney's fees is denied;
7. The claim for costs is denied.

FORUM FEES


Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Claimant is assessed a non-refundable filing fee of \$250.00;
2. Forum fees in the amount of \$21,000.00 for twenty-one hearing sessions at \$1,000.00 per session are assessed as outlined below;
3. Claimant is further assessed \$10,500.00 in forum fees;
4. Shearson Lehman Hutton, Inc. is assessed \$9,450.00 in forum fees;
5. Kathleen Hegenbart is assessed \$1,050.00 in forum fees;
6. Claimant shall receive a credit of \$1,250.00 which was previously paid. Therefore, the total amount due from Claimant is \$9,500.00.

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

Page 5
90-02937.Award

Concurring Arbitrator's Signature
Name



Cornelius J. McAuliffe, Esq.
Chairperson - Public

Date of Decision: June 03, 1992

Page 5
90-02937 Award

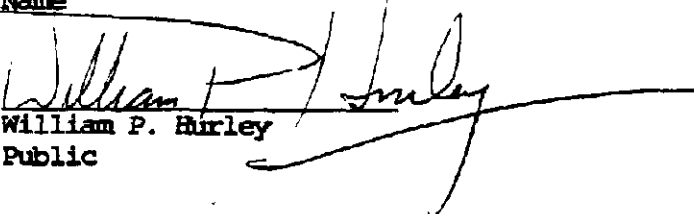
Concurring Arbitrator's Signature
Name


John F. Doyle
Industry

Date of Decision: June 03, 1992

Page 5
90-02937.Award

Concurring Arbitrator's Signature
Name


William P. Hurley
Public

Date of Decision: June 03, 1992