

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 BetweenName of Claimants

Estate of Thomas Stenbaugh by T. William Stenbaugh

90-03103

PUBLICName of Respondents

Shearson Lehman Brothers, Inc.
Daniel C. Lucas

REPRESENTATION

For Claimants Estate of Thomas Stenbaugh by T. William Stenbaugh
("Claimants"): Stewart C.W. Weiner, of Maddin, Hauser et al.

For Respondents Shearson Lehman Brothers ("Shearson") and Daniel C. Lucas
("Lucas"): Dana S. Donohue, of Hertz, Schram et al.

CASE INFORMATION

Statement of Claim filed: September 26, 1990.

Claimant's Submission Agreement signed on: March 11, 1991.

Statement of Answer filed by Respondent Shearson on: June 17, 1991.

Respondent Shearson's Submission Agreement signed on: July 2, 1991.

Statement of Answer filed by Respondent Lucas on: June 19, 1991.

Respondent Lucas's Submission Agreement signed on: June 19, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: October 8, 1991/2 sessions
October 9, 1991/2 sessions
April 28, 1992/1 session
April 29, 1992/2 sessions

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimants alleged Lucas churned the account of Thomas Stenbaugh ("T. Stenbaugh"); that the account was handled aggressively and unsuitable securities were recommended; Lucas made unauthorized trades; Lucas' decisions regarding T. Stenbaugh's account were made to further Lucas' and Shearson's interests; sale of securities previously held for many years by T. Stenbaugh

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resulted in a tax liability which, in light of his health problems, were unsuitable investments; and that Shearson failed to properly supervise Lucas' activities.

Respondent Shearson alleged T. Stenbaugh closely monitored his personal investments; spoke with Lucas frequently; was provided with up to six (6) research reports per week pertaining to investments that had been recommended by Shearson; all decisions to invest were authorized by T. Stenbaugh; T. Stenbaugh received oral and written confirmation slips after execution of each trade; T. Stenbaugh did not complain about any transactions; and that Lucas reviewed all statements with T. Stenbaugh. Shearson maintained the account was not churned; the securities recommended were suitable for T. Stenbaugh, in light of his poor health; there was no unauthorized trading in the account; and the account was properly supervised by Shearson.

Respondent Lucas alleged T. Stenbaugh had the capacity to understand the statements of account provided by Shearson; denied that the securities recommended were unsuitable for T. Stenbaugh, in light of his deteriorating health; denied that he made virtually all decisions with respect to the purchase and sale of securities for T. Stenbaugh's portfolio; maintained that this was a discretionary account and that T. Stenbaugh authorized each transaction in advance; asserted that he discussed each transaction before and after its entry with Lucas, and that T. Stenbaugh received a confirmation for each transaction. Lucas denied that his decisions regarding T. Stenbaugh's portfolio were made solely to further his own and Shearson's interest in generating commissions; and denied the claim of churning.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$50,000.00, plus interest; exemplary and compensatory damages; costs and attorneys' fees.

Respondent Shearson requested: the arbitrators award \$0.00 dollars to T. William Stenbaugh, as Personal Representative of the Estate of Thomas Stenbaugh; costs; and attorneys' fees.

Respondent Lucas requested: the arbitrators award \$0.00 dollars to T. William Stenbaugh, as Personal Representative of the Estate of Thomas Stenbaugh; costs; and attorneys' fees.

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.

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AWARD

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

- 1- Respondents are liable, jointly and severally, and shall pay to Claimants the sum of \$20,000.00;
- 2- All other claims are dismissed;
- 3- The parties shall each bear their own expenses, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

7 sessions X \$500.00 = \$3,500.00 minus hearing session deposit of \$500.00 = net \$3,000.00 due.

Forum fees Assessed Against:

- 1- Respondents, jointly and severally, in the amount of \$3,000.00. In addition, Respondents shall, jointly and severally, reimburse Claimants the sum of \$500.00 to represent the hearing session deposit previously deposited by Claimants.

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

Concurring Arbitrators' Signatures


Alan Schenk/Public Arbitrator

Date of Decision: June 12, 1992

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William Dobrett Public Arbitrator

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Lawrence D. Rosenstock/Industry Arbitrator

Date of Decision: June 12, 1992