

NASD

N.A.S.D. WORD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York

In the Matter of the Arbitration Between

Name of Claimant

Shearson Lehman Hutton, Inc.

90-03375

Name of Respondent

William Garner

REPRESENTATION

For Claimant: Victor A. Machcinski Jr., Esq. of Shearson Lehman Brothers, Inc.

For Respondent: Kevin R. McDermott, Esq. of Schottenstein, Zox & Dunn

CASE INFORMATION

Statement of Claim filed: November 27, 1990.

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

Statement of Answer and Counterclaim filed by Respondent, William Garner on: January 24, 1991.

Respondent, William Garner's Submission Agreement signed on: January 22, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: October 1, 1991, 2 sessions
October 2, 1991, 2 sessions
October 3, 1991, 2 sessions
Pre-Hearing Conference July 19, 1991, 1 session

Hearing Location: Columbus Bar Association, Columbus, Ohio

CASE SUMMARY

Claimant Shearson Lehman Brothers, Inc. ("Claimant") alleged that Respondent William Garner ("Respondent") placed market orders on August 6, 1990 to buy certain index options, which were filled, and the next day Respondent continued to trade in the same options. Claimant alleged that when Respondent was unwilling or unable to fund the deficit in his account, which had occurred as of the close August 7, 1990, Claimant liquidated Respondent's account. Claimant alleged that although Respondent has received notice of the debit balance, the debit balance remains due and owing.

Respondent maintained that the market orders placed on August 6, 1990, should have been limit orders, and that the trades on August 7, 1990 were unauthorized. Respondent, therefore maintained that he was not liable for the debit balance in his account. Respondent asserted a counterclaim against Claimant and alleged that he was unsuitable for the size and types of trades at issue, and that he never authorized these trades. Respondent further alleged that the trades at issue violated his investment objective, and that his broker made misrepresentations and engaged in overtrading. Respondent maintained that he was relatively unsophisticated investor and therefore relied upon his broker for investment advise, counsel and execution. Respondent alleged that his broker embarked upon a course of unsuitable trading in order to generate excessive commissions which left Respondent without a reasonable chance to make money. Respondent alleged that Claimant failed to adequately supervise the Respondent's brokers conduct and that Claimant is liable under the doctrine of Respondent Superior. Respondent alleged that Claimant and its agents were negligent in the handling of Respondent's account and that they breached their fiduciary duty they owed to Respondent. Respondent asserted that as a result of Claimant and its agents fraudulent conduct, which violated the common law and Federal Securities Laws, Respondent has been monetarily damaged.

Claimant denied categorically all of Respondent's allegations and further denied that it is liable to Respondent for any damages. Claimant further maintained that Respondent was a sophisticated investor who wanted to trade options aggressively. Claimant maintained that all trades were suitable for Respondent and were authorized by Respondent. Claimant specifically maintained that on August 6, 1990, Respondent placed market orders and that the orders were filled and that Respondent was promptly advised of the prices his options were filled at. Claimant maintained that although Respondent was upset with the prices, he did not dispute the orders until later. Claimant maintained that Respondent acknowledged to Claimant's agent that his instructions were for market orders. Claimant further maintained, that by virtue of Respondent's conduct and delay, that Respondent ratified the trade.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$102,922.88, plus costs, attorneys' fees and interest from the date the debit was incurred.

Respondent requested dismissal of the Statement of Claim with prejudice, an award of compensatory damages against Claimant on the Respondent's counterclaim in the amount of \$375,000.00; an award of punitive damages in the amount of \$125,000.00; an award of costs, prejudgment interest and attorney fees against Claimant.

Claimant requested that the counterclaim of Respondent be, in all respects, dismissed.

AWARD

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

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

1. Claimant's claim is denied in its entirety.
2. That Claimant is liable to Respondent on his counterclaim and shall pay to the Respondent the sum of Two Hundred Thirty Eight Thousand Five Hundred and 00/100 (\$238,500.00); with interest from the date of receipt of this award at a rate of 10% per annum simple interest.
3. The respective parties shall each bear their costs, including attorneys' fees.

FORUM FEES

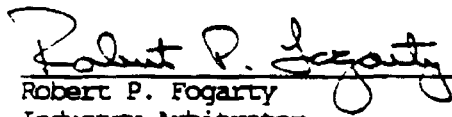
Pursuant to Section 43(c) of the Code of Arbitration Procedure, that all forum fees be assessed to the Claimant so that the Claimant is assessed \$300.00 for the one prehearing conference (one prehearing conference x \$300 = \$300) and Claimant is assessed \$4500 for the six hearing sessions conducted in this matter (6 hearing sessions x \$750 = \$4500). However, Claimant is entitled to offset this amount with its hearing session deposit of \$750 previously deposited by Claimant so that the amount due from Claimant as hearing session fees is \$3750 and the total fees due from the Claimant are \$4050.

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Award #90-03375

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

ARBITRATION PANEL

Concurring Arbitrator's Signature:


Robert P. Fogarty
Industry Arbitrator

Date of Decision: _____

DATED: November 1st, 1991

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

ARBITRATION PANEL

Concurring Arbitrator's Signature:


Austin P. Wildman, Esq.
Public Arbitrator/Chairman

Executed on:
Date-of-Decision: 10-28-91

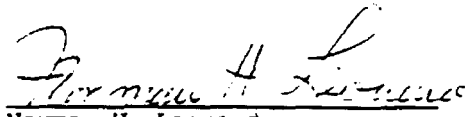
DATED: November 1st, 1991

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Award #90-03375

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ARBITRATION PANEL

Concurring Arbitrator's Signature:


Norman H. Leonard
Public Arbitrator

Executed on:
Date of Decision: October 25 1991

DATED: November 1st, 1991