

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Sam Nakis, Harry G. Lake, Arthur Lagadinos  
and Peter Pavoris, on their own behalf and on  
behalf of the Order of Ahepa

90-03394

Name of Respondents

Shearson Lehman Brothers, Inc. (n/k/a Smith Barney Shearson, Inc.)  
Janney Montgomery Scott Inc.  
J.C. Bradford & Co.  
Peter Derzis  
Peter Poneris  
Order of Ahepa

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REPRESENTATION

Claimants Sam Nakis, Harry G. Lake, Arthur Lagadinos and Peter Pavoris, on their own behalf and on behalf of the Order of Ahepa ("Claimants") were represented by Dan J. Kazanas of the law firm of Klutho, Cody, Kilo, Billingsley & Trame, P.C.

Respondent Shearson Lehman Brothers, Inc. ("Shearson") was represented by Philip J. Murren of the law firm of Ball, Skelly, Murren & Connell.

Respondents Janney Montgomery Scott, Inc. ("JMS") and Peter Derzis ("Derzis") were represented by F. Joseph Nealon, Esq. of law firm of Ballard, Spahr, Andrews & Ingersoll.

Respondent J.C. Bradford & Co. ("Bradford") was represented by Claude O. Ramer, II, Assistant General Counsel at J. C. Bradford & Co.

Respondent Peter Poneris ("Poneris") was represented by Christopher W. Mattson, Esq. of the law firm of Barley, Snyder, Senft & Cohen.

Respondent Order of Ahepa ("Ahepa") was represented by Saul C. Belz, Esq. of the law firm of Waring Cox.

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### **CASE INFORMATION**

Statement of Claim filed: November 29, 1990  
Amended Statement of Claim filed: June 24, 1991  
Claimant Sam Nakis' Submission Agreement signed on: November 28, 1990  
Claimant Harry G. Lake's Submission Agreement signed on: May 6, 1991  
Claimant Arthur Lagadinos' Submission Agreement signed on: May 2, 1991  
Claimant Peter Pavoris' Submission Agreement signed on: April 29, 1991  
Claimant Sam Nakis, as Chairman of the Order of Ahepa Investment Committee, Member in Good Standing of the Order of Ahepa, Beneficiary of the Order of Ahepa Trust Fund, Past Member of the Order of Ahepa Board of Directors and Past Supreme President of the Order of Ahepa Board of Directors, executed Order of Ahepa's Submission Agreement on: January 22, 1991.

Statement of Answer filed by Shearson on: November 23, 1992  
Shearson's Submission Agreement signed on: August 22, 1991

Respondent JMS and Derzis Answer to Claimants' Amended Statement of Claim filed: August 29, 1991  
JMSs' Submission Agreement signed on: September 27, 1991  
Peter Derzis' Submission Agreement signed on: September 19, 1991

Respondent Bradford Response to Statement of Claim filed: August 16, 1991  
Bradford's Submission Agreement signed on: December 14, 1992

Respondent Poneros Response to Claimants' Amended Statement of Claim filed: September 24, 1991  
Poneros Submission Agreement signed on: September 24, 1991

Respondent Ahepa's Response to Claimants' Amended Statement of Claim filed: March 26, 1992  
Ahepa did not sign a Submission Agreement.

### **HEARING INFORMATION**

Hearing Dates/Sessions:  
March 25, 1993 - 2 sessions  
April 22, 1993 - 2 sessions

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April 23, 1993 - 2 sessions  
May 17, 1993 - 2 sessions  
May 18, 1993 - 2 sessions  
May 19, 1993 - 2 sessions  
June 21, 1993 - 2 sessions  
June 22, 1993 - 2 sessions  
June 23, 1993 - 2 sessions  
June 24, 1993 - 2 sessions  
August 17, 1993 - 2 sessions  
August 18, 1993 - 2 sessions  
August 19, 1993 - 2 sessions

Hearing Location: Various sites in Washington, D.C area.

#### **CASE SUMMARY**

Claimants, through a shareholders derivative claim, alleged inter alia that Respondents breached their fiduciary duties to the Order of Ahepa, a charitable organization, by violating Sections 10(b) and Rule 10(b)(5) promulgated thereunder and 20(a) of the Securities and Exchange Act of 1934 (Exchange Act) as amended; violating the Racketeer Influence and Corrupt Organizations Act ("RICO"), 18 U.S.C., Section 1962(a); violating New York Stock Exchange Rule 405 ("Know Your Customer Rule"); violating the NASD's Rules of Fair Practice Article III, Sections 1 and 2 thereunder. Claimants alleged that Respondents violated the Ahepa's Trust Agreement and/or Investment Guidelines by placing Ahepa in unsuitable investments that were risky and speculative. Claimants alleged that Ahepa's Trust Fund had specifically restricted investments to those that were backed by the full faith and credit of the United States government or certificates of deposit that were insured by FDIC or FSLIC. Claimants alleged that Respondents failed to diversify investments, that Respondents invested Ahepa's monies in low rated, speculative "junk" bonds and that Respondents placed Ahepa in limited partnerships and closed in funds. Claimants alleged that Respondents failed to protect Ahepa's income and capital and failed to disclose excessive fees and costs relative to those investments. Claimants further alleged that the Respondents were aware of the investment restrictions set forth in the Trust Agreement and/or Investment Guidelines concerning the preservation of capital. Claimants further alleged that the Respondents through Derzis' and Poneris extensive business and social relationships, usurped control over Ahepa's investments and violated Section 10(b) and Rule 10(b)-5 of the Exchange Act. Claimants alleged that Respondents were fiduciaries of Ahepa and breached those fiduciary duties they owed to Ahepa.

Respondents categorically denied all allegations of wrongdoing asserted by Claimants and maintained that Claimants accounts were properly handled in accordance with Ahepa's investment objectives. Respondents Shearson, JMS, Bradford, Ponerros and Derzis maintained that they are not liable to Claimants because all investments were approved by Ahepa's investment committee and that this matter is internal within Ahepa and not for arbitration with the Respondents since Ahepa's Board of Directors voted six (6) to three (3) not to initiate legal action relating to the matters at issue. Respondents maintained that the Ahepas' registered representatives, Ponerros and Derzis, acted appropriately, and reasonably believed that the investments at issue were consistent with Ahepa's investment objectives. Respondents further maintained that they did not breach any fiduciary duty owed to the Claimants because they assumed no control nor discretion over the account at any time and that the investments were ratified by Claimants. Respondents also maintained that the Claimant suffered no damages but made a significant amount of money on the investments at issue. Respondents maintained that Claimants' claim is barred by Section 15 of the Code of Arbitration Procedures and by the applicable statutes of limitations. Respondents maintained that Claimants lack standing to sue. Ahepa maintained that, acting through its Board, it acted in compliance with the applicable standards of care and exercised sound business judgment in carrying out its duties to its members.

#### **RELIEF REQUESTED**

Claimants at the hearing requested and award for compensatory damages as follows: an award against Bradford and Derzis in the amount of \$199,747.03; an award against JMS and Derzis in the amount of \$340,682.82; an award against Shearson and Ponerros in the amount of \$247,462.50; and an award against Ponerros in the amount of \$135,472.75; for a grand total of \$923,365.10, plus interest and attorneys fees. Claimants also requested in their pleadings RICO and punitive damages.

Respondents requested that Claimants' claim be dismissed with prejudice and that Respondents be awarded all costs, fees and expenses incurred in defending this action.

#### **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.

The Panel heard oral argument on Respondents Motion to Sever; Motion to Dismiss for Lack of Standing; Motion to Preclude Shearson Lehman Brothers Inc.'s Answer and the Motion to Dismiss for Failing to State a Claim with Specificity. All of these Motions were denied. The Respondents Motion to Dismiss as Claimants' claim being barred by Section 15 of the Code of Arbitration Procedure and the applicable statutes of limitations were deferred by the Panel until the hearing was completed. The Panel received Post-Hearing briefs relating to, inter alia, the Respondents Motions to Dismiss for Lack of Standing and to dismiss on the basis that Claimants' claims are barred by the applicable statutes of limitations. Because the Panel decided this matter on the merits, the Panel deemed both motions to be moot.

The Panel noted that during the course of the hearings that Claimants dismissed their arbitration claims against Shearson and Ponerros with prejudice. Shearson and Ponerros participated in the hearings on March 25, 1993, April 22 and 23, 1993 and did not participate in the other hearing dates. Claimants filed their Dismissal Memorandum as to Respondents Shearson and Ponerros on June 21, 1993.

The Panel further noted that prior to the close of the hearing Ahepa was dismissed as a nominal Respondent from this action.

#### **AWARD**

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

1. The Claimants' securities claims are denied in their entirety.
2. The Claimants' claims for RICO and punitive damages are denied in their entirety.
3. That any and all other claims brought before this Panel are denied in their entirety.
4. Each party shall bear its own costs and expenses including attorneys'

fees; except as specifically addressed herein.

### **OTHER COSTS**

The costs for arbitration hearings conducted at the Ritz Carlton and the Washington Hilton and Towers shall be borne by Claimants and Respondents JMS, Bradford, and Derzis as follows: The banquet charges for these hearings were \$1,761.06. Claimants shall pay to the NASD the sum of \$440.26 to cover their assessment of the banquet charges. Respondents JMS, Bradford and Derzis are each assessed banquet charges in the amount of \$440.26. This expense shall be paid to the NASD, Inc.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

26 sessions X \$1000 = \$26,000

The first six hearing sessions (\$6,000 in fees) held on March 25, April 22 and April 23, 1993 were conducted with all initially named parties and the panel has decided to split the fees for six hearing sessions of \$6,000 against the Claimants and Respondents, with the exception of Ahepa, \$1,000 each, so that Claimants are assessed \$1,000. However, Claimant is entitled to offset this assessment with their hearing session deposit of \$1,000 previously filed so that no fees are due from the Claimants for the first six hearing sessions. Shearson is assessed \$1,000; Bradford is assessed \$1,000; JMS is assessed \$1,000; Poneris is assessed \$1,000; and Derzis is assessed \$1,000 for the first six hearing sessions.

The remaining 20 hearing sessions (\$20,000 in fees) are assessed as follows: Claimants are assessed forum fees in the amount of \$11,000  
Respondent Bradford is assessed an additional forum fee of \$3000 so that a total of \$4,000 is due from Respondent Bradford. Respondent JMS is assessed an additional forum fee of \$3,000 so that a total of \$4,000 in forum fees is due from JMS. Respondent Derzis is assessed additional forum fees

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in the amount of \$3,000 so that the total in forum fees due from Derzis is \$4,000.

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

Concurring Arbitrator's Signature  
Name

  
Marvin Elster, Esq.

11-10-93

  
Public/Industry

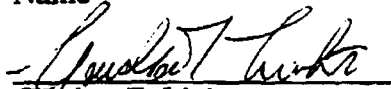
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in the amount of \$3,000 so that the total in forum fees due from Derzis is \$4,000.

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

Concurring Arbitrator's Signature  
Name

  
Gordon F. Linke

Public/Industry



NASD Date of Decision: November 23, 1993

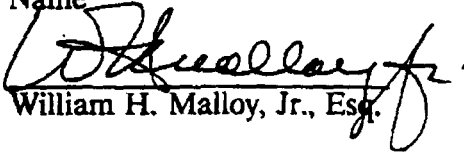


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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature  
Name

  
William H. Malloy, Jr., Esq.

  
Public/Industry

NASD Date of Decision: November 23, 1993