

PUBLIC

NASD

Arbitration

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

Larwill Investment N.V.

90-03553

Name of Respondents

Shearson Lehman Brothers, Inc.
James Gunther
Gail Constantin
Michael Constantin

REPRESENTATION

For Claimant: Peter R. Silverman, Esq. of the law firm of Silverman,
Collura & Chernis, P.C.

For Respondent: Linda Yarden, Esq.

CASE INFORMATION

Statement of Claim filed: December 18, 1990.

Claimant's Submission Agreement signed on: December 7, 1990.

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

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on:
April 1, 1991.

Respondent James Gunther's Submission Agreement signed on: February 28,
1991.

Respondents Gail Constantin and Michael Constantin's Submission Agreements
signed on: January 14, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: January 14, 1992, 2 Sessions
January 15, 1992, 2 Sessions
May 11, 1992, 2 Sessions
May 12, 1992, 2 Sessions

Hearing Location: Offices of the NASD located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondents ignored Claimant's instructions to transfer its account from Shearson Lehman Brothers, Inc. to Prescott, Ball & Turben, Inc. and intentionally sabotaged Prescott's attempts to conclude an orderly transfer of the account and their actions were motivated solely by their greed and a desire to retain a substantial and lucrative customer. Claimant further alleged Respondents took advantage of Claimant's unfamiliarity with the securities system and intentionally left Claimant with the clear impression that the account was in jeopardy of being liquidated and as a result Claimant was literally coerced into selling a number of positions which resulted in substantial damages. Claimant further alleged when Claimant's account failed to transfer from Shearson Lehman Brothers, Inc. to Prescott, Ball & Turben, Inc., Claimant's request to purchase substantial positions in two new issues, of which Prescott, Ball & Turben, Inc. was part of the underwriting group, was not honored and Claimant was denied a substantial profit which it otherwise would have earned. Claimant further alleged it was overcharged commissions for transactions in the period December 26, 1989 through January 2, 1990. Claimant further maintained Shearson Lehman Brothers, Inc. should have instituted and implemented supervisory procedures which would have prevented the individual Respondents from blatantly disregarding the account transfer procedures and ignoring and frustrating the instructions of Claimant.

Respondents maintained they acted at all times in good faith in accordance with the New York Stock Exchange Rule 412 and attempted to respond expeditiously to the transfer request and further, acceded to the client's change of position with respect to the transfer. Respondents further maintained that the signature of the Larwill Investment N.V. agent was not guaranteed on the Customer Securities Account Transfer Form received on December 12, 1989 from Prescott, Ball & Turben, Inc.; therefore, the transfer was denied and later that month Respondents were told there were problems with the account but Claimant did not want his accounts transferred. Respondents further maintained that on January 4, 1990 they became aware of Claimant's desire to transfer the account to Jeffries & Co., and the account was transferred in accordance with Claimant's new instructions. Respondents further maintained Claimant directed and/or authorized the execution of all transactions in its account and is estopped from bringing this action; Respondents did not make any misrepresentations, omissions or misstatements with respect to the investments made in Claimant's account; to the extent Claimant's accounts have diminished in value, such diminutions were the result of unforeseen market fluctuations and within the risk Claimant assumed; Claimant's claims are barred by the equitable principles of waiver, estoppel and ratification; Claimant is precluded from recovering punitive damages in an arbitration proceeding and Claimant's comparative fault, lack of diligence and failure to conduct their own financial affairs reasonably and responsibly bars any recovery of damages.

RELIEF REQUESTED

Claimant requested damages of \$91,652.00 as a result of the premature sell-off of securities that it would otherwise have retained in its portfolio, damages of \$285,000.00 as a result of the lost opportunity to purchase new issues; damages of \$6,923.78 for commission overcharges and \$1,150,000.00 in punitive damages.

Respondents requested dismissal of Claimant's claim and that they be awarded costs and attorneys' fees incurred in the matter.

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. The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$48,125.00 representing damages due to the untimely sale of securities.
2. The claims by the Claimant for damages due to lost opportunity to purchase new issues are dismissed.
3. The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$6,923.78 representing damages for commission overcharges.
4. All claims against Respondents Gail Constantin, Michael Constantin and James Gunther be and hereby are dismissed in all respects.
5. The claims by the Claimant for punitive damages are denied.
6. The Claimant be and hereby is liable and shall pay to the NASD the sum of \$250.00 representing the balance of the adjournment fee outstanding.
7. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

8 Sessions X \$1,000.00 = \$8,000.00 minus hearing session
deposit of \$1,000.00 = net \$7,000.00 due.

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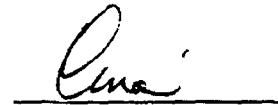
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$3,000.00 to represent forum fees and the Respondent Shearson Lehman Brothers be and hereby is liable and shall pay to the NASD the sum of \$4,000.00 to represent forum fees.

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

ARBITRATOR SIGNATURE



Richard H. Rosenblum, Esq.
Public Arbitrator



Decision: June 11, 1992