

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Franklin & Doris Shears

No. 91-00135

Name of Respondents

Shearson Lehman Hutton, Inc.
Tom Bandyk

REPRESENTATION OF PARTIES

For Claimants: Judy E. Bregman, Esq.

For Respondents: Walter J. Piszczatowski, Esq.

CASE INFORMATION

Statement of Claim filed: on or about January 10, 1991

Claimants' Submission Agreement signed on: December 20, 1990

Statement of Answer filed by Respondent, Shearson Lehman Hutton, Inc. and Tom Bandyk, on or about March 15, 1991

Respondent Tom Bandyk's Submission Agreement signed on: September 18, 1991

The NASD does not have a record of Respondent Shearson, Lehman, Hutton, Inc.'s Submission Agreement in its file.

HEARING INFORMATION

Hearing dates: September 26, 1991

October 22, 1991

Location: Chicago, Illinois

CASE SUMMARY

Claimants Franklin and Doris Shears ("Claimants") alleged that in March and June of 1987, Claimants deposited a total of 1667 shares of Gerber Common Stock with Respondent Shearson Lehman Hutton, Inc. ("SLH"). Respondent Tom Bandyk was expressly instructed to place 784 of these shares into Claimants' new Individual Retirement Account ("IRA") with Respondent SLH. The Gerber stock represented a significant portion of Claimants' retirement security. All of the Gerber stock went into a regular account in which Respondent Tom Bandyk began a series of discretionary trading in 1987. The trading included options and margins. The options trading agreement allegedly had been prepared without Claimants' knowledge, and Respondent Tom Bandyk allegedly misrepresented Claimants' net worth, income, employment status, and trading experience. Respondent Tom Bandyk also allegedly falsified the confirmation slips sent to the Claimants to indicate Claimants initiated the trades in stocks and options. Claimant Franklin Shears had an eighth grade level of education. Respondent Tom Bandyk allegedly placed 84 transactions in Claimants' account in 1987, and 130 transactions in 1988. Claimants were not informed as to the location of the Gerber stock until 1990 by Respondent SLH.

Claimants alleged that they did not understand the numerous trades in stock and options that were made, and also alleged Respondents falsely indicated on a majority of the confirmation slips sent to the Claimants, that the trades were unsolicited. The Claimants went on to maintain that a rudimentary examination by supervisory SLH personnel would have disclosed Claimants' lack of knowledge as to what was going on in his account, and his unsuitability for option and stock trading, and the churning that took place. Claimants alleged having a limited education, lack of knowledge of the market, and the Claimants alleged that they were purposely misled by Respondent Tom Bandyk and supervisory personnel of Respondent SLH.

In a joint Statement of Answer filed with the NASD on or about March 15, 1991, Respondents Tom Bandyk and SLH denied each and every allegation made in the Statement of Claim. In addition, Respondents Tom Bandyk and SLH asserted the following affirmative defenses:

1. The Claimants' Statement of Claim fails to state a claim for which relief may be granted;
2. The Claimants' Claim is barred by: the applicable statutes of limitations; the statute of frauds; the doctrines of laches, waiver, estoppel, and ratification; failure of consideration; and contributory negligence;
3. Claimants have failed to mitigate their damages;
4. Respondent SLH's obligation, if any, to Claimants has

been fully paid, satisfied, and discharged;

5. The wrongdoing alleged in the Statement of Claim was perpetrated by other entities or individuals;
6. Claimants assumed the risk of the transactions engaged in, and the investment losses; and
7. Claimants have failed to plead fraud with the particularity required.

RELIEF REQUESTED

Claimants requested that the panel award them their out-of-pocket losses of \$77,042.01. Claimants further requested treble damages be assessed against the Respondents, or in the alternative, punitive damages in the amount of \$231,126.03. Claimants also requested they be awarded the costs of this action, interest on the amount of their lost investment, and reasonable attorney's fees.

Respondents requested that the Claimants take noting by their claim, and that the Respondents be reimbursed for their costs and attorney's fees incurred in defense of this claim.

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.

AWARD

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

1. Respondents Shearson Lehman Hutton, Inc., and Tom Bandyk are jointly and severally liable for, and shall pay to Claimants Franklin and Doris Shears the sum of \$85,052.00 as compensatory damages:
2. Respondents Shearson Lehman Hutton, Inc. and Tom Bandyk are jointly and severally liable for, and shall pay to Claimants Franklin and Doris Shears attorney's fees in the amount of \$15,000. The authority for the award of

attorney's fees is contained in Claimants' hearing memorandum submitted to the panel on October 22, 1991; and

3. Respondents Shearson Lehman Hutton, Inc. and Tom Bandyk are jointly and severally liable for, and shall pay to Claimants Franklin and Doris Shears exemplary (punitive) damages in the amount of \$50,000.00 because of the conduct of Respondents Shearson Lehman Hutton, Inc. and Tom Bandyk in dealing with the Claimants, Franklin and Doris Shears, was willful and wanton so as to demonstrate a reckless disregard for Claimants' rights. The authority for the award of exemplary (punitive) damages is contained in Claimants' hearing memorandum submitted to the panel on October 22, 1991.

FORUM FEES

1. Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200 filing fee and the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants Franklin and Doris Shears.

2. Respondents Shearson Lehman Hutton, Inc. and Tom Bandyk are jointly and severally liable to and shall pay to Claimants Franklin and Doris Shears the sum of \$950 expended by Claimants as their costs in this matter.

3. Respondents Shearson Lehman Hutton, Inc. and Tom Bandyk are jointly and severally liable to the NASD, pursuant to Section 43 (c) of the Code of Arbitration Procedure, for the 3 additional hearing sessions held on September 26, 1991 and October 22, 1991 in the amount of \$2,250.00 (3x750.00 regular).

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

Dated:

December 4, 1991

James S. Teborek
James S. Teborek
Presiding Chair
Public Arbitrator

December 1, 1991

Anne Crane
Public Arbitrator

December 4, 1991

Gordon A. Neal
Gordon A. Neal
Industry Arbitrator