

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

William and Rose Rothman)

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)
Harvey Bassin)

Case No. 91-00202

REPRESENTATION

For Claimants, William and Rose Rothman ("Rothmans"): Dan Brecher, Esq. of the Law Offices of Dan Brecher.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"): Brian Joslyn, Esq. of Boose, Casey, Ciklin, et al.

Respondent, Harvey Bassin ("Bassin"): pro se.

CASE INFORMATION

Statement of Claim filed: January 17, 1991. Claimants' Submission Agreement signed: December 26, 1990.

Respondent, Shearson's, Statement of Answer filed: July 1, 1991. Respondent's Submission Agreement signed by William Hobauser, Esq. on behalf of Shearson on April 11, 1991.

Respondent, Bassin, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code, Respondent, Bassin, being a person associated with an NASD member firm at the time this controversy arose.

HEARING INFORMATION

On February 4, 1992, in Fort Lauderdale, Florida, a hearing lasting three (3) sessions was conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for fraud; negligence; breach of contract; breach of fiduciary duty and for failing to advise Claimants of the risks of margin and of trading in options and for misrepresenting the

safety of options trading. Claimants alleged that such investments were not suitable for them in light of their investment objectives and sophistication and that Bassin drained the account and executed unauthorized trades.

Respondent, Shearson, denied all allegations of wrongdoing and alleged that: the trades were authorized by Claimants and were in accord with their stated investment objectives; Claimants were advised of the risks involved; Claimants failed to timely object to the trades; the claims are time barred, and the statutes of limitation have expired.

Respondent, Shearson, alleged affirmative defenses including: assumption of risk; ratification; account stated; estoppel; waiver; laches; failure to state a cause of action for fraud; failure to mitigate damages; failure to exercise due care and the damages were not caused by Shearson.

Respondent, Bassin, failed to file an Answer and appeared via telephone only to request a postponement.

RELIEF REQUESTED

Claimants requested damages in the amount of \$63,159.00 plus interest, costs and attorney's fees.

Respondent, Shearson, requested dismissal of the claim, plus costs.

Respondent, Bassin, failed to file an Answer.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure and the form U-4 executed by Respondent, Bassin.

2. Respondent, Bassin, having acknowledged receipt of Notice of this proceeding, requested a postponement of the arbitration. This Panel finds that Respondent, Bassin, has not shown sufficient cause to postpone the hearing. Additionally, this Panel has determined, pursuant to Section 25(b)(2)(III) that Respondent, Bassin, shall be barred from presenting any matter, arguments or defenses at the hearing.

3. For the reasons set forth in the record of proceedings, this Panel finds service upon and adequate Notice to Respondent, Bassin. The NASD has made every attempt to locate and serve Respondent, Bassin, with Notice of this hearing as demonstrated by the evidence contained in the record of proceedings.

4. Claimants and Respondent, Shearson, 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, these 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, the undersigned arbitrators have decided in full and final

resolution of the issues submitted for determination as follows:

1. Respondents, Shearson and Bassin, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$27,131.00.
2. Claimants' request for attorney's fees and interest is denied.

OTHER COSTS

1. Respondent, Shearson, is also found liable and shall pay to Claimants the amount of \$100.00 for copying costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (three sessions x \$500.00 per session). Respondents, Shearson and Bassin, are hereby assessed \$1,000.00, jointly and severally, \$500.00 of which shall be paid directly to the Claimants, and \$500.00 of which shall be paid to the National Association of Securities Dealers, Inc. Additionally, Respondents, Shearson and Bassin, are hereby assessed the \$150.00 filing fee to be paid directly to Claimants. The NASD shall retain the \$150.00 filing fee and the \$500.00 hearing session deposit previously paid by Claimants in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

<u>/s/</u> Monica I. Salis, Esq.	Public
<u>/s/</u> Diane M. Perry, Esq.	Public
<u>/s/</u> Kjell W. Pøttersen	Industry

Date of Decision: FEBRUARY 21, 1992