

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ralph S. Burch

No. 91-00588

Name of Respondents

Shearson Lehman Hutton, Inc.
Rodman & Renshaw, Inc.
Lester W. Rodgers

REPRESENTATION OF PARTIES

For Claimant: Paul F. Harvey, Esq. and Dennis Bell, Esq. of Bell & McGurk, Chicago, Illinois.

For Respondents Shearson Lehman Hutton Inc. and Lester W. Rodgers: Thomas M. Knepper, Esq. of Neal Gerber & Eisenberg, Chicago, Illinois.

For Respondents Rodman & Renshaw, Inc. and Lester W. Rodgers: Richard Reidman, Esq. and Eric S. Rein, Esq. of Schwartz, Cooper, Kolb & Gaynor CHTD, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: February 22, 1991.

Claimants' Submission Agreement signed on: February 15, 1991.

Joint Statement of Answer filed by Respondents, Shearson Lehman Hutton, Inc. and Lester W. Rodgers on: May 2, 1991.

Respondent Shearson Lehman Hutton, Inc's Submission Agreement signed on: April 4, 1991.

Respondent Lester W. Rodger's Submission Agreement signed on: May 2, 1991.

Joint Statement of Answer filed by Respondents, Rodman & Renshaw, Inc. and Lester W. Rodgers on: May 8, 1992.

Respondent Rodman & Renshaw, Inc.'s Submission Agreement signed on: April 17, 1991.

HEARING INFORMATION

Pre-Hearing conference dates: October 16, 1991. One session.
November 11, 1991. One Session.
November 23, 1991. One Session.

Hearing dates: May 12, 1992. Two sessions.
May 13, 1992. Two sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant, Ralph S. Burch ("Claimant") alleged violations by Respondents Shearson Lehman Hutton, Inc. ("SLH"), Rodman & Renshaw, Inc. ("Rodman"), and Lester W. Rodgers ("Rodgers") of Section 10b of the Securities and Exchange Act of 1934, 15 U.S.C. Section 78j, and Rule 10b-5, 17 C.F.R. Section 240.10b-5, pursuant thereto, Section 20 (a) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78t(a), the Illinois Consumer Fraud and Deceptive Business Practices Act, Ch. 121-1/2 Ill.Rev.Stat. Section 261, et seq., NASD Rules of Fair Practice, Article III, Sections 1 (business conduct), 2 (suitability), 18 (fraudulent devices), and 19(a) (improper use), and 27 (supervision), and well-established principles of common law, including respondeat superior, negligence, and breach of fiduciary duty. The allegations arose out of transactions in the following securities: Time, Inc. stock; Zenith stock; Calmat stock; W.W. Grainger stock; Bausch & Lomb stock; West Point Pepperell stock; General Instrument stock; Texas International stock; Heinecke stock; Tonka stock; Downey stock; Coca-Cola stock; Talman stock; International Micro stock; Quacker Oats stock; Eli Lilly warrants; Sea Containers stock; and Prime Computer stock.

Claimant alleged that Michael A. Rago, Jr. ("Rago"), although not a party to this proceeding due to his bankruptcy, was an account representative at SLH, and had handled Claimant's account during the times at issue herein. Claimant went on to state that Rodgers had also been an account representative at SLH and Rodman and had handled transactions in Claimant's account during the time period at issue herein. Claimant further alleged that during 1988, numerous unauthorized transactions had taken place in the aforementioned securities. In May of 1988, Claimant alleged informing SLH that the unauthorized trades had to stop, and that SLH never took any action to stop the trades. Moreover, Claimant alleged that the unauthorized trades continued in Claimant's account. Claimant went on to allege that misrepresentations and omissions were made to him by the

respondents, and that, due to his lack of sophistication, he had followed those recommendations almost without question. Claimant then alleged that respondents repeatedly took very large positions relative to the amount of equity in Claimant's account, and that the turnover rate for his account in: 1987 was 7.55; January, 1988 through July, 1988 was 28 on an annualized basis; and August, 1988 through July, 1989 was 7.57. Finally, it was alleged that SLH failed to establish, maintain or enforce adequate supervision of Rago and Rogers, and knew of or should have known of their activities as alleged above.

In their Statement of Answer, respondents SLH and Rodgers denied that they were guilty of any impropriety whatsoever in connection with Claimant's account. Respondents SLH and Rodgers also alleged that the transactions claimed by the Claimant as being excessively risky were suitable for the Claimant. Respondents SLH and Rodgers further alleged that Claimant had a highly speculative investment objective, and that Claimant had traded in an active and aggressive fashion on SLH's books for almost four full years. Moreover, respondents SLH and Rodgers alleged that every publicly traded stock became volatile as the result of the market fluxuations of October 16 and 19, 1987. Respondents SLH and Rodgers also asserted that Claimant had full control of his account. In addition, respondents SLH and Rodgers asserted the defense that recovery by Claimant is precluded on the basis of the doctrines of ratification, waiver, and estoppel, as well as Claimant's failure to exercise a reasonable degree of care to protect the assets in his account.

For their Statement of Answer, respondents Rodman and Rodgers admitted that Claimant opened an account with Rodman on August 1, 1988, that Rodgers is an account representative with Rodman, and that transactions were made in Claimant's account at Rodman. Respondents Rodman and Rodgers further denied each and every material allegation contained in the Statement of Claim. In addition, respondents Rodman and Rodgers asserted the following affirmative defenses:

1. After each trade had been made, Claimant received a written confirmation. Claimant closed his account in 1989, and the arbitration claim was not brought until February of 1991. Respondents asserted that the delay was unreasonable, and that by his prolonged silence, Claimant intended to adopt any alleged unauthorized trades.

2. Claimant failed to repudiate the acts of Rodgers while at Rodman with reasonable promptness. Since Claimant was fully aware of the conduct as of the date of the transactions, he is estopped from complaining about them.

3. Rodger's actions while at Rodman were performed in good faith.

RELIEF REQUESTED

Claimant requested an award against the Respondents, jointly and severally, in the amount of \$187,848.00 plus interest and costs, including filing fees.

SLH and Rogers requested that Claimant's claims be denied.

Rodman and Rogers requested that the panel dismiss the claims of Claimant, an award in their favor, and that the panel assess all costs against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, Ralph S. Burch's claims against Respondents Lester Rogers and Rodman & Renshaw are hereby denied and dismissed with prejudice.
2. Respondent Shearson Lehman Hutton, Inc. is liable for, and shall pay to Claimant, Ralph S. Burch the sum of \$47,738.00 as satisfaction of his claims herein.
3. Each party shall bear its own costs of this arbitration, except as set forth below.

FORUM FEES

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

3 pre-hearing conference sessions X \$300.00 = \$900.00

4 hearing sessions X \$750.00 = \$3,000.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,200.00 are assessed against the Claimant, Ralph S. Burch.

Additional forum fees in the amount of \$1,950.00 are assessed against Respondent Shearson Lehman Hutton, Inc.

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

CONCURRING ARBITRATORS

Dated:

June 1, 1992

/s/Arthur Medow
Arthur Medow
Presiding Chair
Public Arbitrator

June 1, 1992

/s/William T. White, Jr.
William T. White, Jr.
Public Arbitrator

May 29, 1992

/s/Denis A. Dunne
Denis A. Dunne
Industry Arbitrator

N.A.S.D. Disciplinary Referral

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Name of Claimant

Ralph S. Burch

No. 91-00588

Name of Respondents

Shearson Lehman Hutton, Inc.
Rodman & Renshaw, Inc.
Lester W. Rodgers

The panel of arbitrators named below conducted hearings May 12 and 13, 1992. The panel requests the NASD review whether or not the actions of Shearson Lehman Hutton, Inc. and Rodman & Renshaw, Inc. in relation to their employment practices and the administration of their brokers were contrary to the standards of the NASD.

The panel's concern arose out of the following:

1. In relation to both Rodman & Renshaw, Inc. and Shearson Lehman Hutton, Inc., the panel requests that the NASD look into the incomplete supervision/failure to supervise retail brokers in dealings with customers and recommendations made to customers.
 2. With respect to Rodman & Renshaw, Inc., the panel requests that the NASD look into the matter of the employment of an unregistered broker at Rodman & Renshaw, Inc. who happened to be a partner of Lester W. Rodgers, a newly hired broker during the time-frame of this case.
- Concurring Arbitrators:

Date:

June 1, 1992

/s/Arthur Meadow
Arthur Meadow
Chairman
Public Arbitrator

June 1, 1992

/s/William T. White, Jr.
William T. White, Jr.
Public Arbitrator

May 29, 1992

/s/Denis A. Dunne
Denis A. Dunne
Industry Arbitrator