

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 Claimants

Jackie Leonard , Individually and as
Executor of the Estate of Henry Leonard

vs.

Case #
91-00706

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimants, Jackie Leonard, Individually and as Executor of the Estate of Henry Leonard ("Claimants"), Bruce Handler, Esq. from the law firm of Dornbush Mandelstam & Silverman.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"), Harry T. Walter, Esq. from the firm of Shearson Lehman Brothers, Inc.

For Respondent, Michael Ecker ("Ecker"), Arthur C. Schupbach, Esq. from the law firm of Schupbach, Williams & Pavone.

CASE INFORMATION

Statement of Claim was filed on March 1, 1991.
Claimant's Submission Agreement was signed on March 1, 1991.
Amended Statement was filed on October 24, 1991.

Shearson's Statement of Answer was filed on June 25, 1991.
Shearson signed Submission Agreement was on May 7, 1992.

Ecker's Statement of Answer was filed on September 19, 1991.
Ecker's signed Submission Agreement on August 6, 1991.

HEARING INFORMATION

Hearing Dates/Hearing Sessions:	July 22, 1992	-	Two sessions
	July 23, 1992	-	Two sessions
	July 24, 1992	-	Two sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

In the Statement of Claim, Claimants allege that they at the time of the filing of the claim they were retired and were customers of Respondents since the summer of 1984. Claimants allege that respondents solicited them and that they invested over \$700,000.00 in a variety of high risk limited partnership ventures. Claimants further allege that these immense illiquid investments were unsuitable for the Leonards.

Claimants allege that the Leonards opened five accounts through Ecker at Shearson. Claimants state that shortly after opening these accounts, Ecker advised and encouraged the Leonards to invest substantial sums to purchase interest in limited partnerships engaged in ventures as real estate development, film production and cable television, totalling \$707,500.00 between July 5, 1984 and January 28, 1986. Claimants state that when they expressed concern, Ecker stated that the investments were diversified and safe.

Claimants allege that Ecker, actively solicited and persuaded the Leonards to mortgage their home and invest an additional \$300,000 in Ecker's personal business venture which failed and Ecker then declared personal bankruptcy. Claimants assert that Ecker had filed personal bankruptcy ten years earlier and Shearson and Ecker failed to disclose this to the Leonards.

Claimants further state that Respondents are guilty of the following misconduct: (a) securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78j(b) and Rules 10b-5, 17 C.F.R. 240.10b-5; (b) common fraud under the laws of the State of New York; (c) violation of the NASD Rules of Fair Practice, Art. III Sec. 2; (d) violation of the New York Stock Exchange "Know Your Customer" Rules, NYSE Rule 405; (e) breach of the relevant customer agreements between the parties and the duties of good faith and fair dealing arising thereunder; and (f) breach of the fiduciary duty owed by respondents to their customer. Claimant also state that Shearson is liable for Ecker's acts as "controlling person" under the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78t(a) and under the doctrine of respondeat superior.

Respondent Shearson denies the allegations of wrongdoing set forth in the Statement of Claim and denies that it is liable to the Leonards in any amount.

Shearson alleges that the Leonards opened joint as well as individual accounts and that Jackie Leonard indicated "speculative" among her investment objectives. Shearson states respondents recommended a suitably diversified set of investments including various limited partnership interests. Shearson alleges that in each instance, the Leonards were provided with prospectuses which fairly disclosed the risks and rewards of the investments.

Shearson asserts seven affirmative defenses. Shearson contends that the

Claimants' federal claims are barred by the statute of limitations and rely upon Cares Partners v. GEL Associates, 918 F.2d 349, 351 (2d Cir. 1990). Shearson argues that many of the partnership investments are ineligible for arbitration pursuant to Section 15 of the Code of Arbitration Procedure. Additionally, Shearson argues that the Statement of Claim makes no valid claim against Shearson regarding the Leonard's investment in Ecker's business and that Claimants' remedy, if any, was against Ecker in his bankruptcy proceeding.

Ecker contends that the Claimants are barred from maintaining this proceeding against him based upon his discharge in bankruptcy and moves to dismiss the Statement of Claim on this ground.

Ecker contends that the limited partnership investments were proper and suitable in light of the Claimants' financial condition and investment objectives. Ecker states that Henry Leonard annual earned income exceeded \$100,000.00 and that Claimants' combined assets exceeded \$1,125,000.00. Ecker states that Claimants had prior investment experience and were willing to assume some risk to meet their objective of making money in the market.

Ecker also contends that the investment in his business venture to organize a new firm is not eligible for submission to arbitration under the NASD Code of Arbitration Procedure. Ecker states that he expressly advised Claimants of the risk and that they could lose their entire investment. Ecker further states that the company ceased doing business in 1987, that he filed personal petition in bankruptcy which listed Claimants as creditor and that his debts were discharged. Ecker also allege that the Leonards received notice of the bankruptcy filing and failed to file a claim or object to the discharge. Ecker further asserts ten affirmative defenses.

RELIEF REQUESTED

Claimants request damages, jointly and severally, in the amount of \$398,500.00 against Respondents, not less than \$250,000.00 for their mental anguish, not less than \$700,000.00 in punitive damages, interest accordingly to law, reasonable attorney's fees, the costs and disbursements of this proceeding, and such other and further relief as the panel may deem just and proper.

Respondent requests a dismissal of the Statement of Claim in its entirety and an award of costs against Claimants.

Ecker requests that all claims asserted be dismissed in all respects and that he be awarded attorney's fees and costs.

OTHER ISSUES CONSIDERED AND 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.

Prior to the commencement of the hearings, Claimants filed papers indicating that they did not oppose Ecker's motion to dismiss, that they would pursue their claims against him in bankruptcy court but that they did not submit that the NASD did not have jurisdiction to hear the claims arising out of their investment in Ecker's personal business venture.

At the commencement of the hearing, Shearson made a Motion in limine to restrict the claim to transactions purchased on March 4, 1985, forward in accordance with Section 15 of the Code of Arbitration Procedure. After hearing arguments on this Motion and reviewing the parties' pre-hearing briefs, the panel granted the Motion.

AWARD

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

1. Claimants' claim for recovery on the basis of investment in Ecker's personal business is denied;

2. Claimants' claim for recovery on the basis of its investments in the following limited partnerships is granted as follows:

(a) Shearson shall promptly, but not later than thirty (30) days from the date of the award, at its own reasonable cost and expense, provide all necessary papers for signature by Claimants to effect a transfer to Shearson of the listed limited partnership interest. Claimants shall promptly and within the same time period sign all papers presented to accomplish the transfer.

(b) Upon signature by Claimants, Shearson shall pay the claimant **THREE HUNDRED AND THIRTY FIVE THOUSAND THREE HUNDRED AND SIXTY DOLLARS AND NO CENTS (\$335,360.00)**, which amount includes interest.

(c) The limited partnership interests are:

<u>Description</u>	<u>Purchase Date</u>
Balcor Pension Investments VI	- 3-22-85
Carlyle XIV Ltd.	- 3-28-85
Balcor Pension Investments VI	- 4-26-85
Cable TV Fund #12	- 5-21-85
Cable TV Fund 12-1986 L.P.	- 5-22-85
Cable TV Fund #12	- 6-15-85
Cable TV Fund 12-1986 L.P.	- 6-17-85
Cable TV Fund #12	- 6-20-85

Cable TV Fund #12	-	7-22-85
Cable TV Fund #12	-	7-30-85
Lana Lobell Income Partners	-	8-13-85
Eastpoint Mall	-	8-15-85
Lana Lobell Income Partners	-	8-16-85
Eastpoint Mall	-	10-11-85
Balcor Film Investors	-	10-21-85
Balcor Film Investors	-	10-22-85
Cable TV Fund #12	-	11-18-85
American Income Partners I	-	11-26-85
Federal Insured Mortgage Inv. LP	-	1-21-86
Cable TV Fund #12	-	1-24-86
Cable TV Fund 12-1986 L.P.	-	1-24-86
Cable TV Fund 12-1986 L.P.	-	1-28-86.

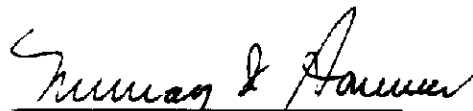
FORUM FEES

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

1. Forum fees in the amount of \$6,000.00 for six hearing sessions at \$1,000.00 per sessions are assessed against Shearson;
2. Shearson is assessed the \$250.00 non-refundable filing fee;
3. Claimant paid \$1,250.00 and shall receive a refund in that amount;
4. Shearson shall satisfy the assessment by reimbursing Claimant \$1,250.00 and remitting the balance, \$5,000.00, to the NASD.

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

Concurring Arbitrator's Signature



Murray I. Sommer, Esq.
Chairperson/Public

Executed on

~~Date of Decision:~~

Sept. 23, 1992

Date of Decision: September 25, 1992

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 13th day of September 1992, before me personally appeared **MURRAY I. SOMMER, ESQ.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

JOEL S. EZRA
Notary Public, State of New York
No. 1146665, Nassau County
Term Expires January 31, 1999 *4*

A handwritten signature in cursive script, appearing to read "J. Ezra", is written over a horizontal line.

Cable TV Fund #12	-	7-22-85
Cable TV Fund #12	-	7-30-85
Lana Lobell Income Partners	-	8-13-85
Eastpoint Mall	-	8-15-85
Lana Lobell Income Partners	-	8-16-85
Eastpoint Mall	-	10-11-85
Balcor Film Investors	-	10-21-85
Balcor Film Investors	-	10-22-85
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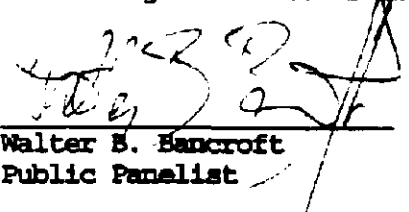
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Concurring Arbitrator's Signature


Walter B. Bancroft
Public Panelist

Executed on
~~Date of Decision~~: September 22, 1992
Date of Decision: September 25, 1992

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 23rd day of September 1992, before me personally appeared **WALTER B. BANCROFT** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

MARVIN L. SILVER
Notary Public, State of New York
No. 8866250
Qualified in Nassau County
Commission Expires November 30, 1992



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Cable TV Fund #12	-	7-30-85
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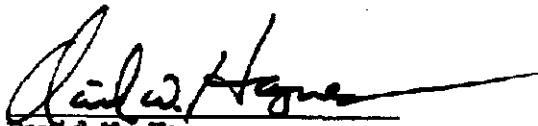
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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature



David W. Haynes
Industry Panelist

Executed on

~~Date of Decision:~~

9-23-92

Date of Decision: September 25, 1992

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 23rd day of September 1992, before me personally appeared **DAVID W. HAYNES** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Silane B. Brendel

David W. Haynes

SILANE B. BRENDEN
Notary Public, State of New York
No. 60-4722657 Qual. in Westchester Co.
Com. filed in New York County
Commission Expires February 28, 1993