

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Cathy A. Smilan

v

91-00725

Shearson Lehman Brothers, Inc
Thomas Schietinger

REPRESENTATION

For Claimant: Daniel J. Bergeson, Esq. - Bergeson & Eliopoulos
For Respondent: E. Scott Douglas, Esq. - Keesal, Young & Logan

CASE INFORMATION

Amended Statement of Claim filed: October 7, 1991
Claimant's Submission Agreement signed on: April 4, 1991

Joint Statement of Answer filed by Respondents on: June 10, 1991
Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement signed
on: June 26, 1991

HEARING INFORMATION

Pre-Hearing Conferences : None

Hearing Dates/Sessions: April 15, 1992 - Two Sessions
April 16, 1992 - Two Sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant, Cathy A. Smilan (Smilan) alleged that Respondents, Shearson Lehman Brothers (Shearson) and Thomas Schietinger, violated Federal Securities Laws, committed fraud, made negligent misrepresentations, breached their contract with Claimant, churned her account, made unauthorized and unsuitable trades, and breached their fiduciary duty. Smilan claims that, because of these alleged acts, she lost the entire value of her \$25,000.00 investment. Said investments were made through various exchanges.

Respondents alleged that they transaction which actually lead to Smilan's losses was an "off-book" or "away from the house" transaction which precludes any liability on the part of Shearson.

RELIEF REQUESTED

Claimants requested: An award of damages according to proof, interest, punitive damages, costs and reasonable attorneys' fees.

Respondents requested: Dismissal of the claim in its entirety, costs and attorneys' fees.

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 original(s) remain on file with the NASD.

AWARD

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

1. Respondent, Shearson Lehman Brothers, Inc., is solely liable and shall pay to Claimant, Cathy A. Smilan, the sum of Four Thousand Dollars and No Cents (\$4,000.00).
2. Respondent, Thomas Schietinger, is solely liable and shall pay to Claimant, Cathy A. Smilan, the sum of Eight Thousand Dollars and No Cents (\$8,000.00).
3. Claimant's claim for punitive damages is denied.
4. The parties shall each bear their respective costs and fees.

FORUM FEES

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

Claimant, Cathy A. Smilan, in the amount of \$400.00, representing an assessment of fees for two hearing sessions at \$400.00 each less the \$400.00 previously deposited with the NASD.

Respondent, Shearson Lehman Brothers Inc., is assessed the sum of \$400.00 representing fees for one hearing session.

Respondent, Thomas Schietinger, is assessed the sum of \$400.00 representing fees for one hearing session.

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

ARBITRATION PANEL

Name
Chet Olsen

Public/Industry
Public Chairperson

Concurring Arbitrators' Signatures



Date of Decision: _____

Served May 26, 1992