

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

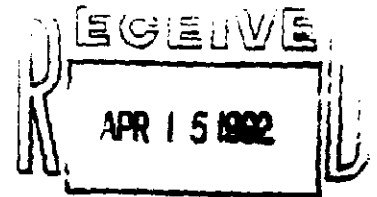
Shearson Lehman Brothers, Inc.

Name of Respondent

Clint G. Laubach

Name of Third-Party Respondent

Stephen T. Rangen



ARBITRATION-CHICAGO
91-00818

REPRESENTATION

Claimant, Shearson Lehman Brothers, Inc. was represented by Jesse B. Simpson, Esq. of Lewis & Roca, Phoenix, Arizona.

Respondent, Clint G. Laubach was represented by Jon A. Titus, Esq. and Thomas W. Donohue, Esq. of Titus, Brueckner & Berry, Scottsdale, Arizona.

Third-Party-Respondent Stephen T. Rangen was represented by Jesse B. Simpson, Esq. of Lewis & Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed by Claimant, Shearson Lehman Brothers, Inc. with the NASD on March 9, 1991.

Claimant, Shearson Lehman Brothers, Inc.'s. Submission Agreement was signed on March 25, 1991 by Michael D. O'Leary, Esq.

The Statement of Answer was filed by Respondent, Clint G. Laubach on July 8, 1991.

Respondent, Clint G. Laubach's Submission Agreement was signed on July 3, 1991.

Third-Party Respondent, Stephen T. Rangen and Claimant-Counter-Respondent Shearson Lehman Brothers, Inc. filed a reply to the counterclaim of Clint G. Laubach on August 22, 1991.

Third-Party-Respondent, Stephen T. Rangen's Submission Agreement was signed on August 5, 1991.

HEARING INFORMATION

Pre-Hearing conferences were held between William M. Howard, Esq., Chairman of the arbitration panel, and counsel of record on the following dates:

December 13, 1991 for one (1) session
January 23, 1992 for one (1) session
January 30, 1992 for one (1) session
January 31, 1992 (9:30 A.M.) for one (1) session
January 31, 1992 (3:30 P.M.) for one (1) session

The hearing dates were February 6, 1992 for two (2) sessions, February 7, 1992 for two (2) sessions, March 24, 1992 for two (2) sessions and March 25, 1992 for one (1) session.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimant, Shearson Lehman Brothers, Inc. ("Shearson") alleged that one of its customers, Respondent, Clint G. Laubach ("Laubach") breached his contract with Shearson. Specifically, Shearson alleged that Laubach executed customer agreements on March 6, 1989 and October 12, 1989. Shearson alleged that the margin agreement executed by Laubach authorized Shearson to liquidate positions if Laubach failed to meet margin calls. Shearson alleged that it was forced to liquidate Laubach's positions after Laubach failed to meet his obligations under the contract and the liquidation left Laubach owing Shearson money which he refused to pay.

Laubach denied liability for the margin debit in his account and alleged that Shearson and Third Party Respondent, Stephen T. Rangen ("Rangen") mishandled his account. Laubach alleged that the margin debit resulted from the unsuitable recommendation to trade on margin by Rangen and alleged that the mishandling of his accounts relieved him of any liability he may have under the customer agreements. Laubach asserted a counter-claim against Shearson and a third-party claim against Rangen. Laubach alleged that his accounts were churned. Additionally, Laubach alleged that the trading in his account was unsuitable given his poor health and the fact that his divorce necessitated conservative management of his accounts.

Specifically, Laubach alleged that his portfolio was not diversified with fully all of his funds invested at one period of time in a single stock, First Executive Corporation. Laubach also asserted that the common stocks purchased for his account were speculative over the counter stocks which involved considerable risk. Laubach alleged that the conduct of Shearson and Rangen violated federal securities laws, Arizona Securities Law, the NYSE and NASD suitability rules, and the Arizona Racketeering Statute. Other common

law claims included, negligence fraud, constructive fraud, negligent misrepresentation, breach of fiduciary duty and negligent hiring. Additionally, Shearson allegedly failed to properly supervise Rangen under its obligations pursuant to applicable regulatory rules of the NASD and NYSE.

Shearson and Rangen filed a reply to the counterclaim and third-party claim respectively and denied the allegations. Shearson and Rangen alleged that Laubach was fully informed of the risks taken in his portfolio and despite recommendations to sell his Executive Life Stock, Laubach gambled and held the position. This stock suffered a precipitous decline in July 1988. Indeed Laubach sold his stock and bought 220 July calls in this period speculating on a short term increase in the price of the stock. Laubach allegedly decided to stay in the market to recover his losses. Shearson and Rangen alleged that Laubach was not an unsophisticated investor, but an astute businessman who owned his own business and who had a substantial income and net worth. Shearson and Rangen also specifically denied the allegations of churning because Laubach maintained control of his account at all times.

RELIEF REQUESTED

Shearson requested an award of the \$37,051.78 debit in Laubach's account, interest on the debit balance, costs of the arbitration and attorney's fees according to the contract executed by and between Shearson and Laubach.

Laubach requested dismissal of the claim and an award of \$150,000 jointly and severally against Rangen and Shearson, treble damages and pre-judgment interest for racketeering, interest on the principal investment at 10% from the date of Laubach's investments until the award was paid, attorney's fees, costs and other expenses incurred, punitive damages and such other relief the panel deemed appropriate.

Shearson and Rangen requested dismissal of the counterclaim and third-party 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.

The panel considered a request from Shearson to amend the claim between the initial hearing dates in February and the continued hearing dates in March. The panel denied Shearson's request to amend the claim pursuant to its authority set forth in Section 39(b) of the NASD Code of Arbitration ("NASD Code").

The panel was orally advised at the hearing on February 6, 1992 that Rangen filed for bankruptcy but no written notice of filing was served on the NASD. The panel therefore adjudicated Laubach's third-party claim against Rangen.

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. Laubach is liable for and shall pay to Shearson in favor of its claim against Laubach, the sum of Thirty-Seven Thousand Fifty-One Dollars and Seventy-Eight Cents (\$37,051.78). Laubach is also liable for and shall pay to Shearson, pre-award interest in the amount of Seven Thousand Ninety-Eight Dollars and Ninety-Seven Cents (\$7,098.97) for a total award of Forty-Four Thousand One Hundred Fifty Dollars and Seventy-Five Cents (\$44,150.75) in favor of Shearson and against Laubach;
2. Shearson is individually and separately liable for and shall pay to Laubach in favor of his counterclaim against Shearson, the sum of Seventeen Thousand Two Hundred Sixty Dollars and Ninety-Six Cents (\$17,260.96). No interest is awarded on this sum;
3. Rangen is individually and separately liable for and shall pay to Laubach in favor of his third-party claim against Rangen, the sum of Seventeen Thousand Two Hundred Sixty Dollars and Ninety-Six Cents (\$17,260.96). No interest is awarded on this sum;
4. Laubach's claims for treble and punitive damages are specifically denied; and
5. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed. The NASD shall retain the \$500.00 non-refundable filing fee paid by Shearson and the \$600.00 hearing session deposit made by Shearson. The NASD shall also retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit made by Laubach.

Additional Forum Fees in the amount of \$4462.50 are assessed against Shearson and are payable to the NASD. Additional Forum Fees in the amount of \$937.50 are assessed against Laubach and are payable to the NASD.

Forum Fees were calculated on the basis of \$300.00 per pre-hearing conference with the Chairman and \$750.00 per hearing session with the full panel of arbitrators and were assessed on a percentage basis of 75% to Shearson and 25% to Laubach with no additional Forum Fees assessed to Rangen.

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

Concurring Arbitrators' Signatures

Dated: _____

William M. Howard, Esq.
Presiding Chair
Public Arbitrator

Dated: APRIL 7, 1992

Daniel J. Danvir
Daniel J. Danvir
Public Arbitrator

Dated: _____

Harry E. Harts
Industry Arbitrator

Date Award Served by the NASD: April 20, 1992

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed. The NASD shall retain the \$500.00 non-refundable filing fee paid by Shearson and the \$600.00 hearing session deposit made by Shearson. The NASD shall also retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit made by Laubach.

Additional Forum Fees in the amount of \$4462.50 are assessed against Shearson and are payable to the NASD. Additional Forum Fees in the amount of \$937.50 are assessed against Laubach and are payable to the NASD.

Forum Fees were calculated on the basis of \$300.00 per pre-hearing conference with the Chairman and \$750.00 per hearing session with the full panel of arbitrators and were assessed on a percentage basis of 75% to Shearson and 25% to Laubach with no additional Forum Fees assessed to Rangen.

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

Concurring Arbitrators' Signatures

Dated: _____

William M. Howard, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

Daniel J. Danvir
Public Arbitrator

Dated: April 7, 1992

Harry H. Harts
Harry H. Harts
Industry Arbitrator

Date Award Served by the NASD: April 20, 1992

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed. The NASD shall retain the \$500.00 non-refundable filing fee paid by Shearson and the \$600.00 hearing session deposit made by Shearson. The NASD shall also retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit made by Laubach.

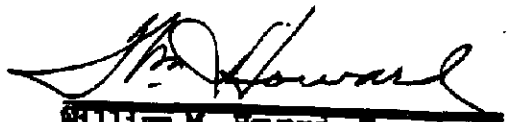
Additional Forum Fees in the amount of \$4462.50 are assessed against Shearson and are payable to the NASD. Additional Forum Fees in the amount of \$937.50 are assessed against Laubach and are payable to the NASD.

Forum Fees were calculated on the basis of \$300.00 per pre-hearing conference with the Chairman and \$750.00 per hearing session with the full panel of arbitrators and were assessed on a percentage basis of 75% to Shearson and 25% to Laubach with no additional Forum Fees assessed to Rangen.

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

Concurring Arbitrators' Signatures

Dated: April 7, 1992



William M. Howard, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

Daniel J. Danvir
Public Arbitrator

Dated: _____

Harry H. Berts
Industry Arbitrator

Date Award Served by the NASD: April 20, 1992