

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William De Nicolo
Telular, Inc.

No. 91-00948

Name of Respondents

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

REPRESENTATION OF PARTIES

For Claimants: Vincent Hart, Esq. and Nicholas P. Iverone, Esq.
of Bellows & Bellows, Chicago, Illinois.

For Respondent Shearson Lehman Hutton, Inc: Thomas M. Knepper,
Esq. of Neal Gerber & Eisenberg, Chicago, Illinois.

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

CASE INFORMATION

Statement of Claim filed: July 22, 1991.

Claimants' Submission Agreement signed on: July 12, 1991.

Statement of Answer filed by Respondent, Shearson Lehman Hutton,
Inc. on: October 9, 1991.

Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement
signed on: September 21, 1991.

Statement of Answer filed by Respondent, Rodman & Renshaw, Inc.

on: August 22, 1991.

Respondent Rodman & Renshaw, Inc.'s Submission Agreement signed on: August 19, 1991.

Letter stating that Rodman & Renshaw, Inc. would be undertaking the defense of Lester W. Rodgers, and also stating that the Answer that had previously been filed on behalf of Rodman & Renshaw, Inc. would also be used as the Answer of Lester W. Rodgers filed: October 25, 1991.

Respondent Lester W. Rodger's Submission Agreement signed on: October 22, 1991.

HEARING INFORMATION

Pre-hearing conference held: July 13, 1992. One (1) session.

Hearing date: October 8, 1992. Two (2) sessions.
October 9, 1992. Three (3) sessions.

Hearing location: Chicago, Illinois.

CASE SUMMARY

Claimants, William L. De Nicolo ("De Nicolo") and Telular, Inc. ("TI") alleged that Lester W. Rodgers' ("Rodgers") and Michael Rago's ("Rago") (not a Respondent in this action) actions violated: (a) the Illinois Securities Act of 1953; (b) common law fiduciary duties; (c) New York Stock Exchange Rules; and (d) the NASD Rules of Fair Practice. The allegations arose out of alleged unauthorized transactions, misrepresentations, breach of contract, and the alleged mishandling of the transfer of De Nicolo's account from Shearson Lehman Hutton, Inc. ("Shearson"), where both Rago and Rodgers had been account executives, to Rodman & Renshaw, Inc. ("Rodman"), Rago's and Rodgers' new employer.

De Nicolo and TI also alleged that by permitting Rago's and Rodgers' actions, Shearson and Rodman violated: (a) the Illinois Securities Act of 1953; (b) common law fiduciary duties; (c) New York Stock Exchange Rules; (d) the NASD Rules of Fair Practice, and (e) breached their duty to supervise.

In its Statement of Answer, Shearson denied the allegations contained in the Statement of Claim. In addition, Shearson asserted that the Statement of Claim did not specify any claims against itself. Shearson also asserted that the allegations contained in the Statement of Claim relate to the time after which Rago and Rodgers had transferred their employment to Rodman.

For their Statement of Answer, Rodman and Rodgers denied the allegations set forth in the Statement of Claim. Rodman alleged that it had no knowledge of the purported agreement between De Nicolo and Rago and/or Rodgers to repay De Nicolo for his losses. Rodman and Rodgers also alleged that Rago had never been a registered representative at Rodman because his NASD registration had never been approved. Rodman and Rodgers further stated that neither Rago or Rodgers had the authority to act as Rodman's agent in making any contract for repayment of losses. Rodman and Rodgers also stated that guaranty of a customers loss by a broker violates Rule 352 of the New York Stock Exchange and Rule 19 (e) of the NASD Rules of Fair practice. Rodman and Rodgers asserted that any contract made in violation of these provisions was void. Lastly, Rodman and Rodgers stated that Claimants' failure to object to any of the trades constituted ratification, estoppel, and waiver.

RELIEF REQUESTED

The Claimants requested that an Award be entered:

1. Against Shearson for that portion of the \$120,000.00 unpaid under the agreement between Rago and the Claimants which is attributable to Shearson's failure to supervise Rago and the account transfer;
2. Against Rodman for that portion of the \$120,000.00 unpaid under the agreement between Rago and Claimants which was attributable to Rodman's failure to supervise Rago and Rogers and the account transfer for \$175,000.00 representing the losses resulting from Rodgers' and Rago's misconduct while at Rodman; and

3. Against Rodgers for that portion of the losses attributable to his collaboration with Rago and for his unauthorized trading.

Respondent Shearson requested that Claimants' claims be dismissed in their entirety.

Respondents Rodman and Rodgers requested that Claimants' claims be denied.

OTHER ISSUES CONSIDERED & DECIDED

On January 10, 1992, Respondent Shearson filed a request for a pre-hearing conference to consider its Motion to Dismiss the claims of Claimants relating to itself. Respondent Rodman had also filed a request for a pre-hearing conference requesting that the arbitrators dismiss the claims, or in the alternative, Claimants be made to identify the facts and to exchange information supporting the claims.

After review of the requests, and the responses, the panel granted the request for a pre-hearing conference, limited the conference to the definition of Claimants' claims, and to assist the parties in discovery. The panel denied Shearson's Motion to Dismiss without prejudice. The original date for the pre-hearing conference had been postponed from May 22, 1992 to July 13, 1992. At the pre-hearing conference, the arbitrators denied Claimants' the right to amend their original Claim.

On October 9, 1992, at the close of Claimants' case, Shearson renewed its Motion to Dismiss. After hearing argument from all parties, and deliberation, the panel granted the Motion, and dismissed Shearson from this arbitration.

On October 9, 1992, Rodman and Rodgers also made Motions to Dismiss at the close of Claimants' case. After hearing argument from all of the parties, and deliberation, the panel granted the Motions as to the contract portion of the claim, and denied the Motions as to all other claims without prejudice.

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 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 have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Shearson Lehman Hutton, Inc.'s, n/k/a Shearson Lehman Brothers, Inc., Motion to Dismiss the Statement of Claim is hereby granted. The Motion to Dismiss applies only to those claims directed to Respondent Shearson Lehman Hutton, Inc.
2. Respondent Rodman & Renshaw, Inc. is liable for, and shall pay to Claimant William De Nicolo the sum of \$94,048.00 as satisfaction of Claimants' claims herein.
3. The Motion to Dismiss Respondent Lester W. Rodgers from this arbitration is hereby granted.
4. Each party shall pay its own attorneys' fees and costs of this arbitration, except as set forth more fully below.

FORUM FEES

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

- 1 pre-hearing conference session X \$300.00 = \$300.00
- 5 hearing sessions X \$750.00 = \$3,750.00

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 Claimants.

Additional forum fees in the amount of \$3,300.00 are assessed against the Claimants.

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

CONCURRING ARBITRATORS

Dated:

October 13, 1992

/s/Ewald L. Moerke
Ewald L. Moerke
Presiding Chair
Public Arbitrator

October 14, 1992

/s/Quinton F. Seamons
Quinton F. Seamons
Public Arbitrator

October 13, 1992

/s/Stephen J. Kennedy
Stephen J. Kennedy
Industry Arbitrator

Date of Service by the NASD:

Oct 20, 1992