

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 Claimant

Marine Midland Bank N.A. as Executor
Of the Estate of Margaret Free

vs.

Case #
91-01057

Name of Respondents

Shearson Lehman Brothers, Inc.
Daniel Remmus

REPRESENTATION

For Claimant, Marine Midland Bank, N.A. as Executor of the Estate of Margaret Free, David Selengut, Esq. of Marvin Neiman, P.C.

For Respondents, Shearson Lehman Hutton, Inc. and Daniel M. Remmus, Arthur C. Schupbach, Esq. of Schupbach, Williams & Pavone.

CASE INFORMATION

Statement of Claim filed: April 1, 1991.

Claimant's Submission Agreement signed on: March 28, 1991.

Joint Statement of Answer filed by Respondent on: September 3, 1991.

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

Respondent's Daniel M. Remmus, Submission Agreement signed on: September 16, 1991.

HEARING INFORMATION

Hearing Dates/Hearing Sessions: January 22, 1992 - Two sessions
May 7, 1992 - Two sessions
May 13, 1992 - One session.

Hearing Location: New York, New York.

CASE SUMMARY

Claimant alleges that Margaret Free died on January 31, 1989 at the age of 82 and that Marine Midland Bank N.A. was appointed Executor of her estate by

Order of the Surrogate's Court of the State of New York, County of Suffolk.

Claimant alleges that in 1987, Mrs. Free's account which was valued at \$78,625.00 was transferred to the Respondent firm from another brokerage firm. Claimant also alleges that a check for \$15,000.00 was paid to the order of Apple Bank and was deposited into Mr. Remmus's account at Apple Bank. Claimant further alleges that by the time the account was closed on April 27, 1989, the value of the account was \$36,814.00. Claimant further alleges that during the time the account was opened at Shearson, there were seventy-one transactions with an aggregate total purchases of \$265,000.00 and \$233,000.00 in total aggregate sales, a five fold turnover using the net worth at December 31, 1987 and seven fold turnover using the net worth at December 31, 1988. Claimant also alleges that the commissions paid during the life of the account was \$12,678.00.

Claimant further alleges that \$20,392.00 in checks were written to Mrs. Free. Claimant contends that \$5,200 was withdrawn on December 16, 1988 and that on December 20, 1988 a check in the amount of \$5,200.00 was made payable to Apple Bank and deposited by Remmus in his account.

Claimant contends that the securities in Mrs. Free's investment portfolio at were held for only a few months. Claimant further contends that the rapid purchases and sales were for the sole benefit of increasing commissions paid to the Respondents. Claimant further contends that certain securities purchased were over the counter stock and the ones that were listed were selling below \$5.00 a share and were with heavily leveraged companies. Claimant also contends that the investments represented a majority of Mr. Free's net worth, excluding her residence and a majority of her income, and were unsuitable for her.

Respondents deny each and every allegation of wrongdoing set forth in the Statement of Claim. Respondents asserts eight affirmative defenses.

Respondents contend that Claimant conclusory alleges that the investments made for the decedent was unsuitable on the sole basis of her age without considering her investment and financial experience, her investment objectives, whether she understood the trading in her account. Respondents also contends that Claimant fails to state which investment was unsuitable.

Respondents argues that Mrs. Free was a bright, energetic and sophisticated woman who had for many years operated a multi-million dollar family paper business as well as a related real estate holding company. Respondent contend that Mrs. Free made her own investment decisions and determined their holding periods and that Remmus always following Mrs. Free's instructions. Respondents further allege that Mrs. Free did not complain about her account.

Respondents contend that this account did not represent a majority of Mrs. Free's net worth excluding her residence and a majority of her income. Respondents further contend that Mrs. Free decline to give full particulars with respect to her financial condition, she expressly advised Mr. Remmus

that she could well afford to lose all of the funds in the Shearson account. Respondents argue that Mrs. Free's estate must have been substantial in light of the fact that Marine Midland Bank would be the Executor named in the Will.

Respondents states that Claimant makes reference to two checks that were given to Mr. Remmus but makes no allegation of wrongdoing in connection with the checks which have nothing to do with this case and are not included in the calculation of damages.

RELIEF REQUESTED

Claimant requests an award of \$43,532.00, attorney's fees and costs.

Respondents request that Statement of Claim be dismissed and that they be awarded costs and attorney's 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 received conformed copies of the Award while the originals remain on file with the NASD.

On January 22, 1992, Respondent made a motion in limine regarding two checks written by Mrs. Free to Mr. Remmus based upon the fact that the checks are the subject of a court case. Claimant objected and moved to amend the Statement of Claim regarding the checks based upon the fact that the parties executed the Submission Agreements and on the theory of respondeat superior theory. The panel denied the motion to amend the claim and granted the motion in limine.

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. All claims asserted by Claimant are denied in their entirety;
2. All claims for attorney's fees are denied.

FORUM FEES

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

1. Forum fees in the amount of \$1,200.00 for three hearing session at \$400.00 per session are assessed and shall be borne by the Claimant;
2. Claimant is further assessed a non-refundable filing fee of \$120.00.
3. Claimant shall receive a credit of \$520.00 which was previously paid. Therefore, the total amount due by Claimant is \$800.00.

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

Concurring Arbitrator's Signature

Name

Peter Brabbe

Peter Brabbe


Public Panelist

Date of Decision: JUNE 02, 1992

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Concurring Arbitrator's Signature
Name


Harvey Barrison, Esq.
Chairperson - Public Panelist

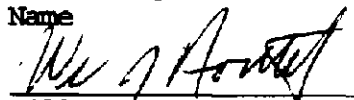
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Concurring Arbitrator's Signature

Name



William J. Rotholz
Industry Panelist

Date of Decision: JUNE 02, 1992