

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert and Elizabeth Perry

91-01165

Name of Respondents

Shearson Lehman Brothers, Inc.
Joel Selden

REPRESENTATION

For Claimants Robert and Elizabeth Perry ("Claimants"): David E. Robbins, of Kaufmann Gildin et al.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Joel Selden ("Selden"): Arthur C. Schupbach, of Schupbach Williams et al.

CASE INFORMATION

Statement of Claim filed: April 12, 1991.

Claimants' Motion to be permitted to file an Amended Statement of Claim filed on: December 12, 1991.

Amended Statement of Claim filed: December 12, 1991.

Claimants' Submission Agreement signed on: April 4, 1991.

Joint Statement of Answer filed by Respondents on: September 9, 1991.

Joint Response to Claimants' Motion to be permitted to file an Amended Statement of Claim filed by Respondents on: December 18, 1991.

Respondent Shearson's Submission Agreement signed on: September 13, 1991.

Respondent Selden's Submission Agreement signed on: January 7, 1993.

HEARING INFORMATION

Pre-Hearing Conference:

December 23, 1992/1 session/1 arbitrator

Hearing Dates/Sessions:

September 24, 1992/1 session/3 arbitrators

January 7, 1993/2 sessions/3 arbitrators

AWARD
#91-01165
Page two

January 12, 1993/2 sessions/3 arbitrators
March 16, 1993/2 sessions/3 arbitrators
March 17, 1993/2 sessions/3 arbitrators

Hearing Location: NASD, New York, NY

CASE SUMMARY

Claimants alleged they began doing business with Selden in 1981. Claimants alleged they told Selden that their investment objective at that time was to purchase safe investments which would never subject their principal to risk and that they were unsophisticated investors. Claimants further alleged Selden told them there were "Blue Chip" limited partnerships with tax advantages available that he was offering to his "preferred clients" and that he would never jeopardize the safety of their principal.

Claimants further alleged these limited partnerships, including Beacon Hill Investors, Ltd. and Cetus Healthcare Limited Partnership II, were unsuitable investments. Claimants also alleged Respondents did not advise them regarding the risks of these investments and when they began receiving negative reports about the activities of the limited partnerships and spoke to Selden they were told there was nothing he could do about it.

Further, Claimants alleged Selden called to tell them about a company called Athlone Industries ("Athlone"). Claimants alleged that within three (3) days the company received negative publicity on a television show and the money they invested was cut in half. They further alleged Selden told them there was nothing to worry about, but Robert Perry ("Perry") decided to meet with Selden and other Shearsons official wherein he presented them with a list of complaints and asked the branch manager to remove Selden from the accounts. Claimants also alleged Selden threatened to reveal a "secret file" to the IRS that he kept on Claimants should they try to "hurt him at Shearson." Claimants alleged this threat concerned them as they were regularly audited by the IRS due to the unpredictable income and nature of Perry's business. Finally, Claimants alleged they were forced to file this arbitration claim due to Shearson's bureaucratic indifference to their complaint.

Respondents alleged Perry told Selden he needed investment advice and that a principal concern was the amount of taxes he had been required to pay on his annual income. Respondents maintained that Selden's initial recommendations were a U.S. Government-backed certificate of deposit, a single premium annuity and other similar investments. Respondents alleged Selden advised Perry to diversify his holdings due to the high rate of inflation in 1981 and that Perry expressed interest in investments that would have the potential to keep pace with the rate of inflation as well as tax benefits.

AWARD
#91-01165
Page three

Respondents asserted the limited partnerships recommended by Selden were not highly leveraged transactions and that Perry was disappointed in the amount of possible tax write-offs but that Selden urged him to consider the write-offs as a secondary matter. Respondents further maintained the limited partnerships were prudent investments and suitable for Claimants.

Respondents asserted Perry continued to express concern regarding his tax situation and subsequent to the investment in limited partnerships Claimants purchased short-term municipal bonds carrying AAA or AA ratings on Selden's recommendations. Respondents alleged the Claimants requested Selden recommend additional equity positions and Selden recommended additional limited partnerships.

Further, Respondents maintained Perry overheard a telephone conversation Selden had regarding Athlone. Selden alleged he explained the situation relating to Athlone at Perry's request. Respondents asserted that when the stock market crashed in 1987 Perry complained to Shearson's branch manager, alleging the purchase of the Athlone was improper. Also, Respondents alleged Claimants voluntarily disclosed their tax problems to Selden and Selden did nothing to exacerbate these problems. Finally, Respondents alleged that the Amended Statement of Claim asserted additional claims which were barred by the six (6) year rule of Section 15 of the NASD Code of Arbitration Procedure ("Code").

Claimants responded to Respondents' Section 15 Motion by alleging that each of the investments set forth in the Amended Statement of Claim were eligible for arbitration under Section 15. Claimants further alleged that it was not until they received notices of bankruptcy proceedings with reference to their limited partnerships that they learned that those limited partnerships may not have been worth what Respondents repeatedly told them they were worth.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of approximately \$588,000.00, plus interest; that the arbitration panel require Shearson to take back the limited partnership interests; costs; punitive damages; and expert witness costs.

Respondents requested: the Statement of Claim be dismissed; the Amended Statement of Claim be dismissed pursuant to Section 15 of the Code on the ground that it was time-barred; costs and attorneys' fees.

AWARD
#91-01165
Page four

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 arbitration panel unanimously determined on October 5, 1992, that the standard under Section 15 of the Code to be followed in this matter was that the occurrence or event giving rise to the act or dispute, claim or controversy was deemed the date of acquisition of the investments involved. Accordingly, no claim was eligible for submission to arbitration when six (6) years had elapsed since the Claimants' acquisition of the investments at issue, and the Amended Statement of Claim was dismissed to the extent it included investments not eligible for arbitration.

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. The claims of Claimants Robert and Elizabeth Perry are denied;
2. All other claims are denied;
3. Each party shall bear its own expenses, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$250.00 non-refundable filing fee previously paid by Claimants and the following Forum Fees are assessed.

1 pre-hearing conference session X \$300.00 = \$300.00 net due.
8 sessions X \$1,000.00 = \$8,000.00 minus hearing session deposit of \$1,000.00
= net \$7,000.00 due.

Forum fees Assessed Against:

1. Claimants are hereby liable in the amount of \$4,150.00; however, the NASD shall retain the \$1,000.00 hearing session deposit previously deposited by Claimants, therefore, the amount due and owing to the NASD equals \$3,150.00;

AWARD
#91-01165
Page five

Respondents are hereby liable, jointly and severally, in the amount of \$4,150.00; therefore, the amount due and owing to the NASD equals \$4,150.00.

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

Arbitrator Signature

A handwritten signature in dark ink, appearing to read 'Irwin Kanengiser', is written over a horizontal line.

Irwin Kanengiser, Public Arbitrator

Date of Decision: April 13, 1993

STATE OF NEW JERSEY
COUNTY OF MORRIS

On this 1st day of April, 1993, before me personally appeared Irwin Kanengiser 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.



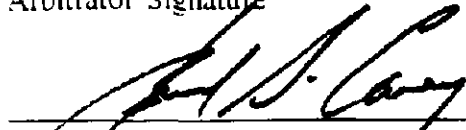
CLARENE BANKS
A Notary Public of New Jersey
My Commission Expires July 31, 1996

AWARD
#91-01165
Page five

Respondents are hereby liable, jointly and severally, in the amount of \$4,150.00; therefore, the amount due and owing to the NASD equals \$4,150.00.

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

Arbitrator Signature

A handwritten signature in dark ink, appearing to read "Bernard S. Carrey", is written over a horizontal line.

Bernard S. Carrey, Public Arbitrator

Date of Decision: April 13, 1993

STATE OF NEW YORK

COUNTY OF NEW YORK

On this 5th day of April, 1993, before me personally appeared Bernard S. Carrey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Harold G. Hovest

Notary Public in and for the State of New York
Qualified in New York County
Commission Expires January 15, 1995

AWARD


#91-01165

Page five

Respondents are hereby liable, jointly and severally, in the amount of \$4,150.00; therefore, the amount due and owing to the NASD equals \$4,150.00.

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

Arbitrator Signature



Andrew Cote Industry Arbitrator

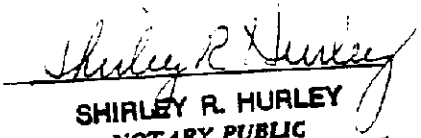
Date of Decision: April 13, 1993

STATE OF CONNECTICUT

LAKEVILLE, CONNECTICUT

COUNTY OF LITCHFIELD

On this 31 day of MARCH, 1993, before me personally appeared Andrew Cote known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


SHIRLEY R. HURLEY
NOTARY PUBLIC
My Commission Expires March 31, 1995