

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Susan O'Shea

91-01304

Name of Respondents

Shearson Lehman Brothers, Inc.
Equitable Securities of New York, Inc.
Peter Tosto

REPRESENTATION

For Claimant Susan O'Shea "Claimant": Milan K. Gregory, a sole practitioner.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson"): Thomas Roberts, of Shanley & Fisher.

For Respondent Equitable Securities of New York, Inc. "Equitable"): David W. Appel, Jr., of Equitable. Neither Mr. Appel, nor any representative of Equitable appeared at the hearing.

For Respondent Peter Tosto ("Tosto"): Peter Tosto. Neither Mr. Tosto, nor any representative of Mr. Tosto's appeared at the hearing.

CASE INFORMATION

Statement of Claim filed: December 1, 1990.

Claimant's Submission Agreement signed on: May 5, 1991.

Statement of Answer filed by Respondent Shearson on: August 22, 1991.

Respondent Shearson's Submission Agreement signed on: July 25, 1991.

Statement of Answer filed by Respondent Equitable on: No Answer was filed by Equitable, as required, pursuant to Section 25 of the Code of Arbitration Procedure ("Code").

Respondent Equitable's Submission Agreement signed on: No Submission Agreement was filed by Equitable, as required, pursuant to Section 25 of the Code.

Statement of Answer filed by Respondent Tosto on: No Answer was filed by Tosto, as required, pursuant to Section 25 of the Code.

Respondent Tosto's Submission Agreement signed on: No Submission

AWARD

#91-01304

Page Two

Agreement was filed by Tosto, as required, pursuant to Section 25 of the Code.

HEARING INFORMATION

Hearing Date/Sessions: June 30, 1992./2 sessions.

Hearing Location: NASD, Inc., New York, NY.

CASE SUMMARY

Claimant alleged she opened a cash account with Equitable in or about 1987, whereby they entered into an agreement pursuant to which Equitable was authorized, in consideration of receiving commissions from Claimant, to effect securities transactions, subject to Claimant's approval. Claimant alleged Tosto conducted unauthorized trades in Claimant's account by purchasing People's Ride Sharing System, Inc., whereby the stock continued to drop in value and Tosto promised Claimant it would rise.

Claimant alleged she opened a cash account with Shearson and Tosto continued to promised her the stock would continue to rise and in or about 1989 she and Shearson entered into an agreement pursuant to which Shearson was authorized, in consideration of receiving commissions from Claimant, to effect securities transactions, subject to Claimant's approval.

Finally, Claimant alleged at all pertinent times, Tosto was a registered representative employed by Shearson and Equitable.

Respondent Shearson took no position regarding the allegations as to how the transactions concerning Equitable came to be made in that these events occurred prior to Claimant's account relationship with Shearson and exclusively involved the other Respondents in this proceeding.

Shearson alleged the loss Claimant sustained was incurred prior to her commencing any account relationship with Shearson. Shearson alleged the only activity in the account was the accrual of interest on the cash balance in Shearson's money market fund.

Shearson alleged it has had no opportunity to discuss the truth or accuracy of the allegations Claimant set forth regarding Tosto's conduct while with Shearson and even if they were true, Claimant sustained no financial damage at Shearson.

Respondent Equitable did not submit a Statement of Answer.

AWARD
#91-01304
Page Three

Respondent Tosto did not submit a Statement of Answer.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$50,000.00; commissions paid by Claimant in the amount of \$3,000.00; interest; costs; disbursements; and attorneys' fees.

Respondent Shearson requested: the Statement of Claim be dismissed and costs.

Respondent Equitable requested: no formal plea of relief was made.

Respondent Tosto requested: no formal plea of relief was made.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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.

Pursuant to the by-laws of the NASD, the arbitration panel determined that Respondents Equitable and Tosto were required to submit to this arbitration and, therefore, are bound by this panel's rulings and determinations;

David Appel and Morgan, Olmstead, Kennedy and Gardner were originally named as Respondents in the above-captioned matter; however, both of these parties have filed for bankruptcy protection and therefore, this action is stayed against each of them.

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- Respondents Equitable and Tosto are liable, jointly and severally, and shall pay the Claimant the sum of \$44,560.00;
- 2- Respondent Shearson is liable, and shall pay to Claimant the sum of \$3,500.00;

AWARD

#91-01304

Page Four

- 3- All other claims are dismissed;
- 4- 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 \$150.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

2 sessions X \$500.00 = \$1,000.00.

Forum fees Assessed Against:

- 1- Respondent Shearson, in the amount of \$500.00; however, in lieu of payment to the NASD, Shearson shall reimburse Claimant the sum of \$500.00 which represents the hearing session deposit previously paid by Claimant;
- 2- Claimant shall be refunded the sum of \$100.00 which represents overpayment of the non-findable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures



Allen Kilik/Public Arbitrator

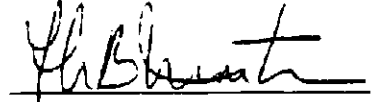
Date of Decision: August 3, 1992

STATE OF NEW JERSEY

S.S.:

COUNTY OF ESSEX

On this 24 day of July, 1992, before me personally appeared Allen Kilik 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.



HELENA B. MONTENEGRO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 3, 1996

AWARD
#91-01304
Page Four

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Concurring Arbitrators' Signatures


Edward Buckley/Industry Arbitrator

Date of Decision: August 3, 1992

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AWARD
#91-01304
Page Four

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Concurring Arbitrators' Signatures


Hedy Voigt, Public Arbitrator


Date of Decision: August 3, 1992

STATE OF *NEW YORK*

COUNTY OF *NEW YORK*

S.S.:

On this *24th* day of *July*, 1992, before me personally appeared Hedy Voigt 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.


L. Andrew Parsons
4949273
WESTCHESTER COUNTY
Reg. No. 2/01/92