

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 Claimants

David J. and Lynn A. Schaefer

91-01335

Name of Respondents

Shearson Lehman Brothers, Inc.
Mark D. Cook

REPRESENTATION

For Claimants David J. and Lynn A. Schaefer ("Claimants"): Walter V. Hines, a sole practitioner.

For Respondent Shearson Lehman Brothers, Inc. ("SLB"): Charles A. Valente, of Alzheimer & Gray.

For Respondent Mark D. Cook ("Cook"): Mr. Cook did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: there was no date on this document; however, it was received by the NASD on April 26, 1991.

Motion to Preclude Answer and Evidence filed: there was no date on this document, nor "received" stamp by the NASD.

Claimants' Submission Agreement signed on: April 15, 1991.

Statement of Answer filed by Respondent SLB on: September 17, 1991.

Respondent SLB's Submission Agreement signed on: August 22, 1991.

Statement of Answer filed by Respondent Cook on: Cook did not file a Statement of Answer as required pursuant to Section 25 of the Code of Arbitration Procedure ("Code").

Respondent Cook's Submission Agreement signed on: Cook did not execute a Submission Agreement as reacquired pursuant to Section 12 of the Code.

HEARING INFORMATION

Hearing Date/Sessions: February 20, 1992/2 sessions.

Hearing Location: NASD, Cleveland, OH.

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CASE SUMMARY

Claimants alleged Cook did not explain the risk involved in trading in options; imparted incorrect information regarding IRS penalties; Cook had Claimants sign, in blank, the EFH documents, including an options agreement; Cook filled in the signed, blank account documents and falsified the Claimants' financial condition and their investment objectives; did not follow Claimant David Schaefer's instructions; allowed certain options to expire worthless; recommended unsuitable options transactions; and placed his interests in commission income ahead of Claimants' interests; and SLB is liable under the doctrine of "Respondeat Superior" and the federal "Controlling Person" statute.

Respondent SLB alleged Claimants materially prejudiced SLB's ability to defend itself from their Claim by their delay in making their demand for arbitration; Cook was an employee of E.F. Hutton & Company, Inc. ("EFH") in its Akron, OH office which has been closed for almost two (2) years and SLB does not employ the person who was the manager of the Akron office at that time, nor does SLB employ Cook; the passage of time makes it nearly impossible for SLB to respond to the Claim; and Claimants have advanced claims almost identical to this one before the Chicago Board Options Exchange.

Respondent Cook did not submit an Answer.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$20,431.00 and interest.

Respondent SLB requested: the Claim be denied based on the Claimants' failure to pursue a timely remedy for their complaints and the resulting prejudice to SLB's ability to defend itself.

Respondent Cook requested: Cook made no formal plea.

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.

1- Pursuant to the by-laws of the NASD, the arbitrators determined that Respondent Cook was required to submit to this arbitration and, therefore, is bound by this panel's rulings and determinations.

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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 are liable, jointly and severally, and shall pay to Claimants the sum of \$21,995.00 inclusive of interest;
- 2- All other claims are denied;
- 3- Parties shall bear their 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 deposited and the following Forum Fees are assessed.

2 sessions X \$500.00 = \$1,000.00 minus hearing session deposit of \$500.00 = net \$500.00 due.

Forum fees Assessed Against:

- 1- Respondents SLB and Cook, jointly and severally, in the amount of \$500.00. Respondents shall also, jointly and severally, reimburse the Claimants the sum of \$500.00 to represent the hearing session deposit.

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

Concurring Arbitrators' Signatures


David Rodriguez/Industry Arbitrator

Date of Decision: March 30, 1992