

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Eliahu Ben- Shmuel

91-01387

Name of Respondent(s)

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant, Eliahu Ben-Shmuel ("Ben-Shmuel"): Jeffrey Crockett, Esq. of Coffey, Aragon, Martin & Burlington.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"): Harry Walters, Esq. of Shearson.

CASE INFORMATION

Statement of Claim filed: May 3, 1991. Claimant's Submission Agreement signed: May 10, 1991.

Respondent, Shearson's, Statement of Answer filed: August 28, 1991. Respondent's Submission Agreement signed: August 27, 1991 by Harry Walters on behalf of Shearson.

HEARING INFORMATION

On September 9, 10 & 11; October 2 & 5; November 10 & 11; and, December 3 & 4, 1992, in Fort Lauderdale, Florida, hearings lasting eighteen (18) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for: unauthorized trades; failure to follow instructions; making unsuitable trades in Claimant's account; improper supervision; violation of Chapter 517 of the Florida Statutes; improper liquidation; conversion; and, civil theft. Claimant alleged that Respondent commenced a course of trading in foreign currency which was not authorized by Claimant and which was unsuitable for Claimant in light of his investment objectives, finances, and instructions to Respondent.

Respondent denied all allegations of wrongdoing and alleged that: Claimant was financially suitable for the transactions; Claimant's investment objective was speculation; Claimant had purchased commodities in the past and was experienced in commodities; and Ben-Shmuel was advised of the risks.

Respondent alleged affirmative defenses including that: a broker does not violate Section 4b of the Commodity Exchange Act for failing to determine whether a customer is suitable for commodity trading; failure to state a claim; assumption of risk; lack of intent; market conditions caused Claimant's losses; failure to timely object; and, estoppel.

RELIEF REQUESTED

Claimant requested damages in the amount of \$2,000,000 plus interest, treble and other punitive damages, costs and attorney's fees.

Respondent requested dismissal of the claim plus attorney's fees.

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 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 and post hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Shearson, is found liable and shall pay to the Claimant the amount of \$745,036.00 plus interest at the (legal) rate of 12% per annum (from 4/1/91 to 1/10/93) in the amount of \$159,213.17 for a total due to the Claimant of \$904,249.17.

2. Claimant's request for attorney's fees, costs, treble damages and punitive damages is denied.
3. Respondent's request for attorney's fees is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$18,000 (18 sessions x \$1,000 per session).
2. Claimant is hereby assessed \$5,400 for which the NASD shall retain the \$1,000 previously deposited in partial satisfaction thereof, leaving a balance due of \$4,400 payable to the National Association of Securities Dealers, Inc.
3. Respondent, Shearson, is hereby assessed \$12,600 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Robert Herschmann, Esq.

Public

/s/

Seth L. Finkel, Esq.

Public

/s/

Guy D. Drake

Industry

Date of Decision: MARCH 5, 1993