

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Joseph R. Scalzo
Dorothy B. Scalzo

NASD Arbitration
No. 91-01423

Name of Respondents

Shearson Lehman Brothers
Barry Alper

REPRESENTATION

For Claimants: Alejandro P. Gutierrez, Esq., Hathaway, Perrett, Webster, Powers & Chrisman,
Ventura, California

For Respondent Shearson Lehman: Kathryn Krebs, Esq., Keesal, Young & Logan, Long Beach,
California

For Respondent Barry Alper: Barry Alper, Securities Arbitration Consultants, Boca Raton,
Florida

CASE INFORMATION

Statement of Claim filed: May 6, 1991

Amended Statement of Claim filed: November 15, 1991

Claimants' Submission Agreement signed: April 19, 1991

Statement of Answer filed by Shearson: April 22, 1992

Statement of Answer & Counterclaim filed by Alper: February 17, 1992

Respondents' Submission Agreements signed:

Shearson Lehman: August 17, 1993

Barry Alper: February 17, 1992

HEARING INFORMATION

Prehearing motion date / sessions:

September 17, 1993 - One Session

Hearing dates / sessions:

April 18, 1994 - Two sessions

April 19, 1994 - Two sessions

April 20, 1994 - One session

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged lack of suitability, churning, unauthorized purchase of stocks on margin, unauthorized trading of stocks and options, fraud, constructive fraud, breach of fiduciary duty, and negligence.

Respondents each denied all allegations of wrongdoing, and each asserted that all investments made prior to six years before the filing of this claim are ineligible for arbitration. Respondent Alper asserted he left the employ of E.F. Hutton (predecessor to Shearson Lehman) in 1987 and had no responsibility for Claimants' account after that time. Respondent Shearson asserted that it at all times maintained an adequate and reasonable system of supervision, that Claimants were fully informed of the risks of their investments before purchase and that Claimants knowingly assumed the risk of investing in the market, that Claimants authorized and approved all transactions in their account.

RELIEF REQUESTED

Claimants requested damages as amended between \$120,000 and \$170,000, plus interest, punitive damages, costs of arbitration and attorney's fees.

Respondents each requested dismissal of all claims.

OTHER ISSUES CONSIDERED AND DECIDED

This claim was filed with the NASD on May 6, 1991. On June 2, 1992, the Claimants filed an identical action against Respondents in Ventura County Superior Court (No. 121774). Respondent Shearson and Claimants stipulated that the Ventura County case would be arbitrated.

Respondents each filed Motions to Dismiss the arbitration claim pursuant to the eligibility requirements of Section 15 of the Code of Arbitration procedure. The panel of arbitrators denied the Motions.

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 original remains on file with the NASD.

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 jointly and severally liable for and shall pay to Claimants the sum of \$160,000.00.
2. The claim for punitive damages is dismissed.
3. The counterclaim of Barry Alper is dismissed.
4. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$200 non-refundable filing fee, and shall refund the \$750.00 hearing session deposit previously paid by Claimants.

Respondents are jointly and severally liable for all forum fees:

One pre-hearing session @ \$300	=	\$300.00
Five hearing sessions @ \$750	=	\$3,750.00
Balance due	=	<u>\$4,050.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Libbe R. Murez	Public Chairperson
Dawn M. Spears	Public Panelist
Robert B. Dunlap	Industry Panelist

Concurring Arbitrators' Signatures

Libbe R. Murez

Served 6/16/94

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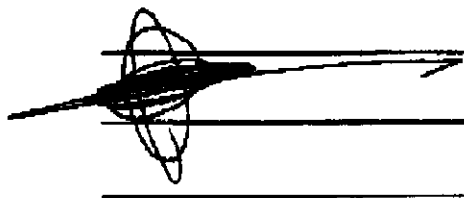
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