

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Linda M. Greenblatt

91-01644

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Kenneth C. Silva

REPRESENTATION

For Claimant Linda M. Greenblatt: David J. Molton, Esq., of the law firm of Molton & Meekins, New York, N.Y.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson") and Kenneth C. Silva ("Silva"): Brian F. McDonough, Esq., of the law firm of Shanley & Fisher, New York, N.Y.

CASE INFORMATION

Statement of Claim filed: May 20, 1991.

Claimant's Submission Agreement signed on: May 2, 1991.

Joint Statement of Answer filed by Respondents on: September 20, 1991.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: February 7, 1992.

Respondent Kenneth C. Silva's Submission Agreement signed on: April 27, 1992.

HEARING INFORMATION

Pre-Hearing Conference: April 1, 1996 - One Session

Hearing Dates/Sessions: July 6, 1995 - Two Sessions
July 7, 1995 - Two Sessions
October 17, 1995 - Two Sessions
October 18, 1995 - Two Sessions
November 9, 1995 - Two Sessions
January 18, 1996 - Two Sessions
January 19, 1996 - One Session
April 2, 1996 - Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant presented herself as a forty-nine year old divorcee who, during her twenty-five year marriage, was employed exclusively as a homemaker and had no experience or involvement with business or financial affairs. Claimants alleged that following her divorce in 1986, she received a settlement of approximately \$17,000,000.00 and that this sum, less \$4,000,000.00 owed in taxes, was to be her sole source of financial support. Claimant alleged that Respondent Kenneth Silva was and continues to be a Vice President/Financial Consultant of and for Respondent Shearson Lehman Brothers, Inc. Claimant next alleged that she met Silva in or about 1986, that Silva represented to Claimant that he understood and would effectively promote Claimant's financial position and investment needs, and that Silva had actual and personal knowledge of Claimant's financial position and investment needs. Claimant further alleged that Silva, at all times during his relationship with Claimant, sought to establish himself as Claimant's trusted and exclusive source of financial guidance, and that he knew or should have known that Claimant had indeed placed absolute trust in his guidance. Claimant maintained that in or about 1986, she placed all her financial assets and investments into four non-discretionary accounts under Silva and Shearson's management, and that Silva represented that the accounts would be used for "investment purposes and long-term growth." Claimant further maintained that, upon Silva's advice, she permitted the accounts to be traded on margin. Claimant alleged that Silva never disclosed to her the amount of his and Shearson's commissions and markups/markdowns, nor did he explain to her the consequences of trading on margin. Claimant further alleged that during a three-year period from approximately April, 1986, Silva, contrary to Claimant's best interests, converted the accounts to trading accounts for his own and Shearson's benefit. Claimant next maintained that during this period, the accounts were used to generate over \$70,000,000 in total trading, and that Respondents thereby earned for themselves over \$1,200,000.00 in total commissions and markups/markdowns. Claimants further maintained that as a result of Silva's actions, she suffered losses of approximately \$950,000.00 in stock and bond trading, approximately \$1,130,000.00 in illiquid and unsellable interests in limited partnerships, and approximately \$228,000.00 in primarily non-deductible margin interest, amounting to total losses of over \$3,500,000.00. Specifically, Claimant alleged that Silva knew or had reason to know that the shortly held municipal bonds, junk bonds, limited partnerships and other investments he recommended were incompatible with Claimant's investment needs, and that contrary to Claimant's need for liquidity, Silva willfully reinvested proceeds from these investments rather than place them in an interest-bearing money market account. Claimant next alleged that Silva contravened his stated investment strategy (developing a portfolio of non-taxable, interest-bearing municipal bonds to support Claimant's household) by trading on margin and thereby placing Claimant over \$2,500,000.00 in debt to Shearson. Claimant further alleged that Shearson had and continues to have an "interest" in many of the investments recommended and procured by Silva for Claimant, and that neither Silva nor Shearson disclosed to Claimant the nature of these "interests".

Claimant alleged that Respondents' conduct, representations and omissions constituted violations of Section 10-b of the 1934 Act, Rule 10b-5, breach of Respondents' duty to provide Claimant with suitable investments, breach of Respondents' fiduciary duty to Claimant and breach of Respondents' contractual duty to Claimant to provide competent and good faith service. Claimant further alleged that Respondents' conduct, representations and omissions constituted wrongful conversion of Claimant's property, unjust enrichment, common law fraud, negligent misrepresentation, negligence, infliction of emotional distress and violation of RICO statutes.

Respondents Kenneth C. Silva and Shearson Lehman Brothers, Inc. in their combined answer, alleged that Claimant met Silva before Claimant received her \$17,000,000.00 divorce settlement, and that Claimant opened four securities accounts under Respondents' management between March, 1986, and

June, 1989. Respondents next alleged that Claimant received copies of all account statements and trade confirmations for each of the four accounts. Respondents further alleged that Martin Rosen (Rosen), Claimant's accountant and financial advisor until February, 1988, and Robert Dale, III, Claimant's accountant and financial advisor from February, 1988, until August, 1990, received all account statements and trade confirmations for the four accounts. Respondents maintained that Silva, responding to Claimant's desire to invest in municipal bonds, arranged for Shearson's Par Services to propose a portfolio of bond investments. Respondents further maintained that in April, 1986, while reviewing the proposal with Rosen and Silva, Claimant demonstrated her investment knowledge by advising Silva of the specific types of bonds and geographical areas she considered most suitable, and that Claimant and her advisors thereafter regularly advised Silva and Par Services on how to handle Claimant's bond investments. Respondents denied Claimant's allegations that they excessively traded Claimant's municipal bond holdings. Respondents alleged that Claimant, seeking opportunities for growth, decided to invest in limited partnerships in the latter half of 1987, and that Claimant had prior understanding of investing in limited partnerships and/or real estate. Respondents further alleged that prior to each limited partnership purchase, Claimant received a detailed prospectus, discussed the purchase with Silva, and that Claimant authorized each purchase. Respondents stated that during the thirty-nine month period beginning April, 1986, Claimant withdrew a total of \$16,593,325.00 in checks, cash and American Express charge expenses. Respondents maintained that Claimant's excessive spending thwarted Silva's repeated warnings and his attempts to arrange for Claimant's income and liquidity needs. Respondents next maintained that seemingly ill-advised trades in Claimant's holdings were necessitated by Claimant's repeated failure to abide by Silva's financial planning. Respondents further maintained that contrary to Claimant's allegations, only one of Claimant's accounts was placed on margin, and that margin interest accumulated as a result of Claimant's excessive spending rather than as a result of excessive trading by Silva. In summary, Respondents alleged that claimant deposited a total of \$17,685,529.00 in her Shearson accounts, withdrew \$17,047,833.00 in cash, checks, charge expenses, and direct limited partnership distributions, and that Claimant currently holds limited partnership investments with a total face value of \$1,100,000.00. Respondents maintain that Claimant has, therefore, suffered no actual losses. As affirmative defenses, Respondents stated that Claimant had failed to state a claim on which relief could be granted. Respondents further maintained that Claimant was an experienced investor, directed and authorized all transactions in her accounts, and expressly or impliedly represented that she understood the risks of her investments. Respondents next maintained that claimant was prevented from bringing her claim by the doctrines of estoppel, waiver and ratification. Respondents next alleged that because Claimant was a plaintiff in the class action suits filed against the partnerships Radisson, Stamford Towers and Jiffy Lube, Claimant was prevented from pursuing any claims in relation to those partnerships in the present suit. Respondents maintained that they had committed no wrongdoing, alleging that had fully discharged their statutory and professional duties toward Claimant and that they executed transactions only in accordance with Claimant's investment objectives. Respondents next maintained that Claimant failed to establish a proper basis for assessing punitive damages against Respondents, and that punitive damages in this suit were precluded by the U.S. Constitution and New York State law. Respondents further maintained that Claimant failed to set forth sufficient facts to establish a claim under the RICO statute.

RELIEF REQUESTED

Claimant requested in her pleadings the following relief, to be assessed jointly and severally against Respondents:

- | | |
|---|----------------|
| - actual damages connected with trading losses: | \$ 3,500,00.00 |
| - actual damages connected with infliction of emotional distress: | \$ 500,000.00 |

- punitive damages: \$10,000,000.00
- treble damages \$10,500,000.00
- interest on the above damages
- costs of arbitration, including attorneys' fees
- other relief that the panel may deem appropriate

Respondents Silva and Shearson requested in their pleadings that the Statement of Claim against them be dismissed in its entirety, and that the costs of arbitration be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the injunction barring Claimant from relitigating in arbitration her claims concerning investments in Stamford Towers Limited Partnership and Shearson California Radisson Plaza Partners Limited Partnership the arbitrators did not make a decision against 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 Shearson Lehman Brothers, Inc. and Kenneth C. Silva be and hereby are liable jointly and severally and shall pay to the Claimant Linda M. Greenblatt the sum of \$556,500.00 plus simple interest at the rate of 7% per annum from the date of decision to the date of payment of the Award.
2. The Claimant's request for punitive damages and damages for infliction of emotional distress are denied.
3. The Claimant's request for damages under the RICO statute is denied.
4. The Respondents be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$1,800.00 to reimburse her for her filing fees previously paid.
5. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

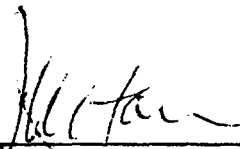
claim filing fee:	\$ 300.00
Pre-hearing conference fee:	\$ 300.00
hearing session fees: \$1,500.00 x 15 sessions =	\$22,500.00
Total Fees:	\$23,100.00

The undersigned arbitrators have determined that the Respondents shall bear the cost of arbitration.

1. The Respondents are jointly and severally liable and shall pay the sum of \$23,100.00 less the Claimants' fees (\$1,800.00) = net \$21,300.00 due.

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

ARBITRATORS' SIGNATURE



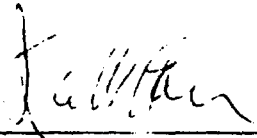
Ira M. Starr, Esq.
Public Arbitrator

Neil J. Carey
Public Arbitrator

C. Anthony Bell
Industry Arbitrator

NASD Date of Decision: May 15, 1996

I, **Ira M. Starr, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.




I, **Neil J. Carey**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

I, **C. Anthony Bell**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

NASD Date of Decision: May 15, 1996

ARBITRATORS' SIGNATURE

Ira M. Starr, Esq.
Public Arbitrator




Neil J. Carey
Public Arbitrator

C. Anthony Bell
Industry Arbitrator

NASD Date of Decision: May 15, 1996

I, **Ira M. Starr, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

I, **Neil J. Carey**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

A handwritten signature in dark ink, appearing to read "Neil J. Carey", is written over a horizontal line.

I, **C. Anthony Bell**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

NASD Date of Decision: May 15, 1996

ARBITRATORS' SIGNATURE

Ira M. Starr, Esq.
Public Arbitrator

Neil J. Carey
Public Arbitrator

C. Anthony Bell

C. Anthony Bell
Industry Arbitrator

NASD Date of Decision: May 15, 1996

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I, **Neil J. Carey**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

I, **C. Anthony Bell**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

C. Anthony Bell

NASD Date of Decision: May 15, 1996