

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jill J. Byrne

NASD Arbitration

No.91-01855

Name of Respondents

Shearson Lehman Brothers, Inc.

Thomas Creamer

John D. Frager

REPRESENTATION

For Claimant: Paul W. Thomas, Esq.

For Respondent: Linda Yarden, Esq. Shearson Lehman Brothers, Inc.

CASE INFORMATION

Amended Statement of Claim filed: April 7, 1992

Claimant's Submission Agreement signed on: June 5, 1991

Joint Statement of Answer filed by Respondents on: August 29, 1991

Respondent, Shearson Lehman Brothers' Submission Agreement signed on: August 29, 1991

Respondent, John D. Frager's Submission Agreement signed on: October 16, 1991

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates/Sessions: May 21, 1992 - Two Sessions
June 9, 1992 - Two Sessions
June 10, 1992 - Two Sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant, Jill J. Byrne, alleged that she is seeking recovery based on excessive trading and churning by Respondent, Shearson Lehman Brothers, fraudulent and misleading representations made in the sale of securities, negligence and breach of fiduciary duty. Claimant also states that she is seeking an award of punitive damages against Respondent, Thomas Creamer and also alleged failure to supervise on the part of Respondent, John D. Frager.

Respondents, answering jointly, alleged that the activity in the account was not unsuitable and that the activity in the account was made at the direction of the Claimant; that she received confirmations for each and every trade, and that the account was not overtraded as evidenced by the low turnover in the account. Respondents also alleged that the activity did not warrant any investigation by Shearson Lehman Brothers or Thomas Creamer.

RELIEF REQUESTED

Claimant requested compensatory damages of \$191,030.71, loss of principal in the amount of \$57,916.00, loss of interest at fluctuating 3 month CD rates in the amount of \$83,598.00, recovery of excessive commissions paid in the amount of \$40,076.00, interest paid on unsuitable margin account in the amount of \$9,440.71, punitive damages of \$200,000.00, costs, interest and attorneys' fees.

Respondents requested dismissal of the claim in its entirety.

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 may 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 the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim of claimant, Jill J. Byrne, against Respondent, Shearson Lehman Brothers, is dismissed.
2. Each and every claim of claimant, Jill J. Byrne, against Respondent, Thomas Creamer, is dismissed.
3. Each and every claim of claimant, Jill J. Byrne, against Respondent, John D. Frager is dismissed.
4. The parties shall each bear their respective costs and fees.

FORUM FEES

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

1. Claimant, Jill J. Byrne, is assessed forum fees in the amount of \$2,000.00 representing fees for 3 hearing sessions at \$1,000.00 each, less the initial deposit of \$1,000.00.
2. Respondents, Shearson Lehman Brothers, Inc., Thomas Creamer and John D. Frager, are jointly and severally assessed forum fees in the amount of \$3,000.00 representing fees for 3 hearing sessions at \$1,000.00 each.

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

ARBITRATORS

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Joseph Coelho
Joseph Coelho

Served August 4, 1992

Date of Decision:

June 10, 1992