

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Lanay Locher-Alvarez & Donald R. Alvarez

91-02306

Name of Respondents

Shearson Lehman Hutton, Inc., now known
as Shearson Lehman Brothers, Inc.;
Christopher Tara

REPRESENTATION

For Claimant: Lanay Locher-Alvarez and Donald R. Alvarez were represented by Frank Lewis, Esq. of Langerman, Begam, Lewis and Marks, P.A., located in Phoenix, Arizona.

For Respondents: Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc., and Christopher Tara were represented by Tom Galbraith, Esq. of Lewis and Roca, located in Phoenix, Arizona, and William A. Olshan, Esq. of Shearson Lehman Brothers, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: July 30, 1991.

Claimants' Submission Agreement signed on: August 12, 1991.

Joint Statement of Answer filed by Respondents Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc. and Christopher Tara on: April 3, 1992.

Respondent Shearson Lehman Brother, Inc.'s Submission Agreement signed on: September 29, 1992 by William Olshan, Vice President, Shearson Lehman Brothers, Inc.

Respondent Christopher Tara's Submission Agreement signed on: September 28, 1992.

Claimants' Motion to Bar pursuant Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure filed: February 11, 1992.

Respondents' Response to the Motion to Bar filed: May 14, 1992.

Claimants' Reply to the Response to the Motion to Bar filed: May 18, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Motion to Reconsider filed: July 7, 1992.
Claimants' Reply to Respondents' Motion to Reconsider filed: August 3, 1992.
Respondent Christopher Tara's Joinder in Motion for Reconsideration filed: July 24, 1992.
Respondent Shearson Lehman Brothers, Inc.'s Reply on Motion for Reconsideration filed:
August 6, 1992.
Respondents' Motion to Dismiss Claimants' Union Square and Radisson Claims and Supporting
Brief Filed: October 21, 1992.

Claimants' Response to Shearson's Motion to Dismiss Claimants' Union Square and Radisson
Claims and in the Alternative, If Shearson's Motion is not Denied, A Request to Allow Late
Opting Out and in the Second Alternative to Allow Amendment of the Claim to Allege a New
Security Fraud filed: December 16, 1992.

Respondents' Reply Memorandum on Motion to Dismiss Claimants' Union Square and Radisson
Claims filed: December 30, 1992.

HEARING INFORMATION

Pre-Hearing Conferences: June 29, 1992 with full arbitration panel;
June 30, 1992 with NASD staff;
August 28, 1992 with full arbitration panel;
September 3, 1992 with full arbitration panel.

Hearing Dates/Sessions: January 5, 1993 for Two (2) sessions;
January 6, 1993 for Two (2) sessions;
January 7, 1993 for Two (2) sessions; and
January 8, 1993 for One (1) session.

Hearing Location: Phoenix, Arizona.

CASE SUMMARY

Claimants Lanay Locher-Alvarez and Donald R. Alvarez ("Alvarez or Claimants") alleged that Respondent Christopher Tara ("Tara"), while employed by or acting as an agent for Respondent Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc. ("Shearson"), placed the Claimants' funds into securities which were unsuitable given their investment objectives and, furthermore, misrepresented the accounts to Alvarez. The Claimants specifically alleged as follows:

1. Claimants opened their first Shearson account in the early 1980's, and opened additional accounts thereafter. Tara was well known to Claimants and held himself out as a skilled financial consultant who would not recommend investments that were not wholly suitable to Claimants' investment objectives;
2. Claimants' investment objectives was primarily safety of principal with growth secondary. Tara represented that he would place Claimants only in investments

which met these goals;

3. Despite the investment objectives and the representations made by Tara, the investments placed in the accounts were speculative in nature and totally unsuitable. Over \$250,000.00 of Claimants' funds were placed in limited partnerships which provided Tara with large commissions and misrepresented that he was investing in the same limited partnerships;
4. Tara misrepresented the character of the investments and omitted to advise Alvarez that the principal value of the investments was declining as time passed;
5. In July 1989, Alvarez visited Tara in his new office in the Los Angeles area and Tara failed to disclose the substantial losses in the limited partnerships, but instead represented that the principal would be returned to the investors within a few years with many additional benefits; and
6. The investments placed in the accounts were illiquid and Shearson did not properly supervise Tara in the handling of the Claimants' accounts, resulting in substantial market losses in the accounts.

Based upon the above allegations, Claimants asserted claims for breach of fiduciary duty; misrepresentation; violations of the Federal and State of Arizona RICO laws (18 USCA section 1961 et seq. and 13-2301 ARS et seq.); securities fraud and violation of Section 10(b) of the Securities Act of 1934, 15 USCA section 78j(b) and Rule 10b-5 promulgated thereunder, and Article 13 of the Arizona Securities Act, Section 44-1991 ARS; and violation of the Arizona Consumer Fraud Statute (44-1521 et seq. ARS).

Respondents Shearson and Tara denied the material allegations of the Statement of Claim, alleging that:

1. In mid-1986, Claimants contacted Tara, on an unsolicited basis, and advised him that they wanted to deposit a large sum obtained in settlement of a lawsuit in their Shearson account. These funds were initially invested in floating municipal bonds to provide a high after tax return with liquidity;
2. The Claimants' primary investment objective was income to supplement their employment income and Tara recommended and explained a combination of investments which were consistent with and designed to accomplish Claimants' investment goals;
3. The majority of the Claimants' funds were invested in two different managed funds designed to provide maximum yield along with relative safety of principal. Claimants invested \$250,000.00 in four different limited partnership investments;
4. Two of the limited partnerships, Shearson Union Square Associates L.P. and Shearson Radisson Partners L.P., were the subject of class action lawsuits which

were settled and which it is believed that the Claimants were members of the class. The other two limited partnerships, American Entertainment Partners L.P. and Prime Cable Income Partners L.P. have performed well and in line with the original performance projections:

5. Prior to purchase of the limited partnerships, Tara fully disclosed and discussed the fact that the investments had limited liquidity, but this characteristic did not make the investments inappropriate for the Claimants;

6. Claimants were highly sophisticated people who understood the nature and attendant risks of the investments, and who certainly understood the monthly statements and transaction confirmations they received. Yet Alvarez never complained to anyone at Shearson about Tara's handling of the account; and

7. Any losses sustained by Claimants are the result of unforeseen market fluctuations and are not the Respondents' responsibility.

Respondents also asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim upon which relief may be granted;

2. Claimants are sophisticated individuals who had full knowledge of the nature of the investments and are estopped from bringing this action;

3. Claimants directed and/or authorized the execution of all transactions and are estopped from bringing this action;

4. The claims are barred by the equitable principles of waiver, estoppel and ratification, and, furthermore, are barred by the applicable Statute of Limitations;

5. To the extent that any losses occurred, the losses were within the risks the Claimants assumed;

6. The allegations fail to set forth ultimate facts sufficient to state a claim for recovery of punitive damages;

7. New York law, which is agreed to govern by the customer agreement, precludes a party from recovery of punitive damages in an arbitration proceeding. In addition, the Due Process Clause of the United States Constitution and applicable provisions of the New York State Constitution preclude Claimants from recovering punitive damages;

8. Claimants have failed to set forth sufficient facts to establish a claim under the RICO statute;

9. Claimants' comparative fault, lack of diligence and failure to conduct their own financial affairs reasonably and responsibly bars recovery of any damages; and

10. Claimants' claims are barred because to the extent representations were made about the investments, they were merely expressions of opinion and are not actionable.

RELIEF REQUESTED

Claimants requested entry of an award of actual damages in the sum of \$250,000.00; rescission pursuant to section 44-1991 of the Arizona Securities Act; treble damages as provided for in the Federal and State of Arizona RICO Acts; exemplary damages; interest; attorneys' fees and costs.

Respondents requested that the Claimants' claims be dismissed in their entirety and that Respondents be awarded their reasonable costs and attorneys' fees incurred in defending the claims.

OTHER ISSUES CONSIDERED & DECIDED

On June 29, 1992, the Claimants' Motion to Bar Defenses Pursuant to Section 25(b)(2)(i), (ii) and (iii) and Respondents' Reply to the Motion was argued by the parties in a pre-hearing conference conducted before the full arbitration panel. On July 1, 1992, the panel determined that the Motion would be granted, that Respondent's Answer would be stricken and Respondents would be barred from preventing any evidence, but would be allowed to cross examine Claimants' witnesses.

On September 3, 1992, the full panel heard oral argument on Respondents' Motion to Reconsider the prior ruling of the panel barring Respondents from presenting any defenses at hearing. On September 8, 1992 a written order was executed by the panel. The panel determined that the Motion would be granted, subject to Respondents' complying with certain conditions, including the dismissal of any action which was concurrently pending in any federal or state court involving the accounts, securities or investments which were the subject of this arbitration.

At hearing on January 8, 1993, several preliminary motions were argued before hearing evidence. The following matters were heard and decided by the arbitrators:

1. The Claimant presented a Motion to Bar Certain Defenses pursuant to Section 25(b)(2)(ii) of the NASD Code of Arbitration Procedure. After hearing argument on the Motion, the panel determined that the Motion would be denied;
2. The Respondents' Motion to Dismiss Claimants' Union Square and Radisson Claims and Claimants' Reply was argued by the parties before the panel. The panel determined that it would preliminarily deny the Motion, but take the matter under advisement pending the evidence. The Motion was renewed at the

conclusion of the hearing. The panel has determined that the Motion shall be granted and the claims relating to the Union Square and Radisson investments are dismissed:

3. The Claimants' Request to Allow Late Opting Out and in the Alternative, to Allow Amendment of the Claim to Allege a New Security Fraud was argued by the parties. The panel determined that the Motion to Amend would be denied. The Motion for a late opting out of the class action was preliminarily denied, but taken under advisement pending the conclusion of the evidence. The panel has determined that the Request is denied.

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and hearing submissions, 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 Christopher Tara are jointly and severally liable for and shall pay to Claimants Lanay Locher-Alvarez and Donald R. Alvarez the sum of \$28,000.00;
2. Upon receipt of the sums enumerated in Paragraph 1 above, the Claimants, Lanay Locher-Alvarez and Donald R. Alvarez, shall immediately cause their interest in American Entertainment Partners L.P. and Prime Cable Income Partners L.P. to be transferred to Respondents Shearson Lehman Brothers, Inc. and Christopher Tara, pursuant to the provisions of Section 44-1991 of the Arizona Securities Act;
3. In addition, Respondents Shearson Lehman Brothers, Inc. and Christopher Tara are jointly and severally liable for and shall pay to Claimants Lanay Locher-Alvarez and Donald R. Alvarez the sum of \$9,000.00 as attorneys' fees. In determining to award attorneys' fees to Claimants, the panel considered the arguments of the parties, as well as Section 44-1991 of the Arizona Securities Act, and determined that authority existed for an award of attorneys' fees to Claimants Lanay Locher-Alvarez and Donald R. Alvarez;
4. Claimants' Shearson Union Square Associates L.P. and Shearson Radisson Partners L.P. claims are hereby dismissed and denied in their entirety pursuant to the Motion to Dismiss the claims filed by the Respondents;
5. Claimants' claims for punitive damages and for RICO damages is hereby dismissed and denied in their entirety;

6. The parties shall bear their own costs of arbitration, except for the sums expressly enumerated herein.

OTHER COSTS

Respondents Shearson Lehman Brothers, Inc. and Christopher Tara are jointly and severally liable for and shall pay to the NASD all postponement fees outstanding in the sum of \$500.00.

FORUM FEES

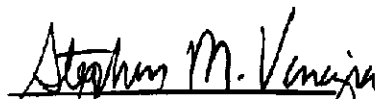
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: Three (3) Pre-Hearing Conference sessions with full panel x \$1,000.00 per session = \$3,000.00; Seven (7) Hearing sessions x \$1,000.00 per session = \$7,000.00; Total Forum Fees = \$10,000.00.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$250.00 and refund the hearing session deposit of \$1,000.00 previously deposited by the Claimants, Lanay Locher-Alvarez and Donald R. Alvarez. Respondents Shearson-Lehman Brothers, Inc. and Christopher Tara are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$10,000.00.

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

Concurring Arbitrators' Signatures
Name

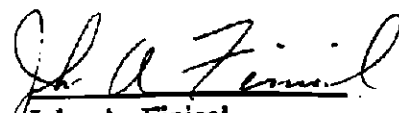
Dated:


Stephen Michael Venezia, Esq.
Public Arbitrator
Chairperson

3/12/93


Robert C. Hubbard
Public Arbitrator

3/12/93


John A. Finical
Industry Arbitrator

3/12/93

Date of Service on Parties: 3-25-93