

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert T. Simrell

91-02314

Name of Respondent(s)

Shearson Lehman Hutton, Inc.

REPRESENTATION

For Claimant: L. Bruce McDaniel, Esq. of DeBank, McDaniel & Anderson.

For Respondent: George C. Covington, Esq. of Kennedy Covington Lobdell & Hickman.

CASE INFORMATION

Statement of Claim filed by Claimant, Robert T. Simrell ("Simrell"): July 30, 1991.

Claimant's Submission Agreement signed on: July 25, 1991.

Answer filed by Respondent, Shearson Lehman Brothers, Inc. ("Shearson") October 2, 1991.

Respondent's Submission Agreement signed on: August 28, 1991 by Rick Apicella on behalf of the firm.

HEARING INFORMATION

Hearing Date/Sessions: April 09, 1992-Three (3) Sessions.
April 10, 1992-Three (3) Sessions.

Hearing Location: Raleigh, NC.

CASE SUMMARY

Claimant alleged that he was an unsophisticated investor when he opened an options account with Respondent and that thereafter Respondent breached its fiduciary duty toward him by making unauthorized purchases, selling unsuitable securities and churning his account. Claimant further alleged that Respondent made false and misleading representations and material omissions with regard to transactions in his account, all involving violations of federal and state securities laws, common law fraud, breach of fiduciary duty, negligence, state unfair trade practices and RICO violations.

AWARD-#91-02314

Claimant further alleged that Respondent failed to properly supervise his account.

Respondent denied all allegations of wrong doing and maintained that Claimant had been the owner of a profitable business which he had sold when he knowingly established a margin account with Shearson and from the beginning engaged in margin trading. Respondent further maintained that at the time that Claimant opened his account he stated that he was an active investor and dealt in precious metals and commodities and when asked what his investment objectives were stated that he was looking for appreciation and income and that he was willing to take some risk. Respondent contended that at no time, in four and one-half years did Claimant ever claim that any of the transactions in his account were unauthorized nor did he ever question the suitability of any purchase or the suitability of his being on margin.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$288,288.02, trebled as required by North Carolina Unfair Trade Practice Law and RICO, and punitive damages of \$1,500,000. Claimants also requested attorneys' fees and costs.

Respondent requested that the Claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

Claimant withdrew his Claim of unauthorized trades during the course of the hearing.

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. Claimant's Claims are denied and dismissed, except for the Claim regarding 5,500 Sally Mae warrants purchased on July 25, 1990; Therefore, Respondent, Shearson Lehman Brothers, shall pay to Claimant, Robert T. Simrell, the sum of Twenty Eight Thousand Eight Hundred Seventy Eight Dollars and Five Cents (\$28,878.05) plus interest at the rate of 8% from fifteen (15) days following the date of this Award;
2. Claimant's Claim for treble damages pursuant to RICO is denied;
3. Claimant's Claim for Punitive damages is denied;
4. Each party shall bear its own costs including attorneys' fees.

MSAD-91-02314

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure the NASD, Inc. shall retain the \$250.00 non-refundable deposit previously deposited by Claimant and the following forum fees are assessed:

6 hearing sessions X \$1,000.00 = \$6,000.00

Forum fees assessed against:

1. Claimant, Robert T. Simrell, in the amount of \$3,000.00; however, the NASD shall offset this fee with the \$1,000.00 hearing session deposit previously deposited by Claimant with the NASD, thereby, Claimant owes forum fees in the amount of \$2,000.00;

2. Respondent, Shearson Lehman Brothers, Inc., in the amount of \$3,000.00.

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

ARBITRATION PANEL

Stephen E. Crable, Esq.
John R. Canada
Thomas C. Borthwick

Public/Chairman
Public/Panelist
Industry/Panelist

Concurring Arbitrators' Signatures

/s/

Stephen E. Crable, Esq.

/s/

John R. Canada

/s/

Thomas C. Borthwick

Date of Decision: May 18, 1992