

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Gerald B. McKeever

and

91-02389

Names of Respondents

Shearson Lehman Brothers, Inc. and
William Crowe

REPRESENTATION OF PARTIES

Claimant, Gerald B. McKeever was represented by Michael Salcido, Esq., Scottsdale, Arizona.

Respondents, Shearson Lehman Brothers, Inc. and William Crowe were represented by Tom Rawles, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 1, 1991.

Claimant, Gerald B. McKeever's Submission Agreement was signed on June 28, 1991.

The Joint Statement of Answer was filed by Respondents, Shearson Lehman Brothers, Inc. and William Crowe on November 12, 1991.

Shearson and Crowe did not file executed Submission Agreements with the NASD.

HEARING INFORMATION

The hearing was held on March 18, 1993 and March 19, 1993 in Scottsdale, Arizona for a total of four (4) sessions.

CASE SUMMARY

Claimant, Gerald B. McKeever ("McKeever") alleged that Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and William Crowe ("Crowe") engaged in securities fraud, engaged in churning of McKeever's account, violated the Arizona RICO statute, A.R.S. Section 13-2301 *et seq.*, breached fiduciary duties owed to McKeever, breached the contract between the parties and were negligent in the handling of McKeever's account.

The foregoing causes of action arose out of failing to follow McKeever's conservative investment strategy. McKeever alleged that he was an unsophisticated investor who had never had a brokerage account prior to his relationship with Crowe and Shearson. McKeever asserted that his account was excessively traded in covered call options on Super Valu, TCBY Enterprises, Kraft, RJR, and Digital Equipment common stock. McKeever asserted that there were over 130 trades effected in his account between May of 1988 and January of 1991. McKeever also asserted that Shearson and Crowe made unauthorized trades for his account and never fully disclosed to McKeever the risks inherent in trading options.

Shearson and Crowe asserted that McKeever wanted to keep all the profits derived from over two years of options trading but to shift to Shearson and Crowe all losses from this same pattern of trading. Shearson and Crowe alleged that the arbitration proceeding was merely an attempt to recover losses attributable to market risks which were fully understood and knowingly accepted by McKeever. Shearson and Crowe asserted that many of the trades in McKeever's account were recommended by him and that all trades in McKeever's account were discussed with and authorized by him. In addition, Shearson and Crowe asserted that the risks and costs of option trading were fully and adequately disclosed to McKeever, all trades were consistent with McKeever's stated investment objectives and strategy, all trades were suitable for McKeever, there was never any omission of material facts to McKeever or any other act or omission by Shearson or Crowe in contravention of McKeever's interests.

RELIEF REQUESTED

McKeever requested compensatory damages of \$150,000.00, disgorgement of overcharges on commissions in the amount of \$60,000.00, treble damages pursuant to A.R.S. Section 23-2314(A), punitive damages, attorney's fees, costs, pre and post-judgment interest and such other relief as the arbitrators deemed just and appropriate.

Shearson and Crowe requested dismissal of the Statement of Claim and that they be awarded their costs and attorney's fees in accordance with A.R.S. Section 12-341.01.

OTHER ISSUES CONSIDERED & DECIDED

Respondents, Shearson and Crowe did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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

1. Shearson and Crowe's motion to dismiss the churning claim and any damages associated therewith, which was taken under advisement at the hearing shall be and is hereby denied;
2. The claims asserted against Shearson and Crowe by McKeever shall be and are hereby denied and dismissed in their entirety; and
3. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code, the NASD shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$1000.00 previously deposited with the NASD by McKeever. Additional Forum Fees in the amount of \$3000.00 are assessed against McKeever.

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Forum fees were calculated at the rate of \$1000.00 per hearing session for four (4) hearing sessions. Additional Forum Fees assessed to the parties are payable to the NASD.

Signatures of Concurring Panel Members:

Dated

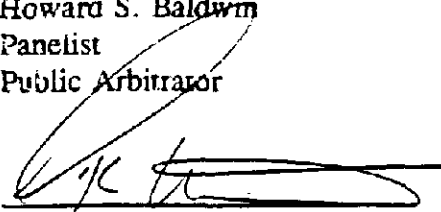
Charles A. Finch
Presiding Chair
Public Arbitrator

Dated

Howard S. Baldwin
Panelist
Public Arbitrator

4/5/93

Dated



Larry K. Wetterschneider
Panelist
Industry Arbitrator

Date Award Served by the NASD: _____

Forum fees were calculated at the rate of \$1000.00 per hearing session for four (4) hearing sessions. Additional Forum Fees assessed to the parties are payable to the NASD.

Signatures of Concurring Panel Members: _

3-29-93
Dated

Charles A. Finch
Charles A. Finch
Presiding Chair
Public Arbitrator

Dated

Howard S. Baldwin
Panelist
Public Arbitrator

Dated

Larry K. Wetterschneider
Panelist
Industry Arbitrator

Date Award Served by the NASD: 5-4

Forum fees were calculated at the rate of \$1000.00 per hearing session for four (4) hearing sessions. Additional Forum Fees assessed to the parties are payable to the NASD.

Signatures of Concurring Panel Members:

Dated

Charles A. Finch
Presiding Chair
Public Arbitrator

4-6-93

Dated

Howard S. Baldwin

Howard S. Baldwin
Panelist
Public Arbitrator

Dated

Larry K. Wetterschneider
Panelist
Industry Arbitrator

Date Award Served by the NASD: 5/4