

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between**Name of Claimant**

S. Richard Stern

vs.

Case #
91-02392

Name of Respondents

Shearson Lehman Brothers, Inc.
Leo Rishy

REPRESENTATION

For Claimant, S. Richard Stern ("Stern"), Daniel W. Krasner, Esq. of the law firm of Wolf Haldenstein Adler Freeman & Herz.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Leo Rishy ("Rishy"), Paul R. Williams of the law firm of Schupbach, Williams & Pavone.

CASE INFORMATION

Statement of Claim filed on August 1, 1991.

Claimant's Submission Agreement signed on: July 8, 1991.

Statement of Answer and Counterclaim filed by Respondents on April 3, 1992.

Respondent, Shearson's, Submission Agreement signed on November 12, 1991.

Respondent Rishy did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: June 3, 1992, 2 Sessions.

Hearing Location: National Association of Securities Dealers, Inc. ("NASD") offices in Boston, Massachusetts.

CASE SUMMARY

Claimant, Stern, alleged that on or about July 5, 1990 he phoned Respondent Rishy, and told him to sell 10,000 shares of WMS because his account was heavily margined and he was not comfortable with his account in that position. Claimant further alleged that Rishy had an undisclosed relationship with WMS and an agreement with WMS to use his best efforts to boost and maintain WMS's share price and to urge his customers to buy and

not to sell WMS shares. Claimant further alleged that Rishty persuaded him to sell only 2,000 shares by making misstatements and misrepresentations about WMS upon which Claimant relied. Claimant further alleged that when the price of the stock fell he was forced to sell his entire portfolio at a severe loss to cover his margin calls. Claimant further alleged that as of November, 1990, the 2,000 shares he had instructed Rishty to sell in July 1990 had not been sold. Claimant further alleged that Respondent Shearson deceived him and failed to supervise Rishty and permitted him to enter into an improper and undisclosed relationship with WMS.

Respondents maintained that Claimant issued his order to sell 2,000 shares of WMS in February 1990, not July, and that the order was immediately executed on February 28, 1990. Respondents further maintained that they made no misstatements or misrepresentations about WMS and that there was no improper and undisclosed relationship between Respondent Rishty and WMS. Respondents further maintained that they did not attempt to boost or maintain the WMS price. Respondents assert as affirmative defenses: that the Statement of Claim failed to state a claim upon which relief could be granted; that the Claimant was barred from recovery because he ratified the transactions in question; that the Claimant waived all claims against Shearson and was estopped from asserting his Statement of Claim by his conduct; that Shearson acted properly and in good faith; that the transactions complained of were all conducted in accordance with applicable rules and regulations; that Shearson maintained an adequate and reasonable system of supervision; and that Claimant was barred by laches and the applicable periods of limitation.

Respondent Shearson alleged in a counterclaim against Mr. Stern that Mr. Stern's Statement of Claim was made in an effort to avoid his liability to Shearson for the deficit margin balance left in his account at the time Mr. Stern's shares were liquidated.

RELIEF REQUESTED

Claimant requested an award in the amount of \$36,890 against Mr. Rishty and Shearson, representing the difference between the market value of his shares when he wanted to sell all 10,000 shares and what he actually received for his shares, or alternatively if his claim with respect to the sale of the 10,000 shares is denied, \$7,360 with respect to the 2,000 shares Mr. Rishty agreed to, but did not, sell for the Claimant.

Respondents requested that the Statement of Claim be dismissed in its entirety and that Respondent, Shearson, be awarded \$8,467.29, together with interest and other and further relief deemed just and proper.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolu-

tion of the issues submitted for determination as follows:

1. All claims against Respondents are denied in their entirety.
2. Shearson's counterclaim for damages against Claimant is denied in its entirety.

FORUM FEES

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

1. Forum fees in the amount of \$800.00 for 2 hearing sessions at \$400.00 per session are to be borne equally by all parties.
2. Respondents are further assessed a non-refundable filing fee of \$500.00 for the counterclaim.
3. Claimant deposited \$400.00 with the NASD and shall receive a credit for that amount. Therefore, the total amount due by Claimant is \$0.00.
4. Respondents deposited \$0.00 with the NASD for their counterclaim. Therefore, the total due by Respondents is \$900.00.

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

ARBITRATION PANEL

Peter P. Harrington, Jr., Esq.	-	Chairperson/Public
Sumner J. Goffin, Esq.	-	Public
Charles E. White, II	-	Industry

Concurring Arbitrator's Signature

Name


Peter P. Harrington, Jr., Esq.

Executed on

~~Date of Decision~~

Date of Decision: July 20, 1992

tion of the issues submitted for determination as follows:

1. All claims against Respondents are denied in their entirety.
2. Shearson's counterclaim for damages against Claimant is denied in its entirety.

FORUM FEES

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

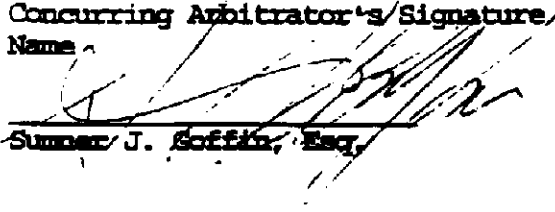
1. Forum fees in the amount of \$800.00 for 2 hearing sessions at \$400.00 per session are to be borne equally by all parties.
2. Respondents are further assessed a non-refundable filing fee of \$500.00 for the counterclaim.
3. Claimant deposited \$400.00 with the NASD and shall receive a credit for that amount. Therefore, the total amount due by Claimant is \$0.00.
4. Respondents deposited \$0.00 with the NASD for their counterclaim. Therefore, the total due by Respondents is \$900.00.

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

ARBITRATION PANEL

Peter P. Harrington, Jr., Esq.	-	Chairperson/Public
Sumner J. Goffin, Esq.	-	Public
Charles E. White, II	-	Industry

Concurring Arbitrator's Signature/
Name


Sumner J. Goffin, Esq.

Date of Decision: July 27, 1992

tion of the issues submitted for determination as follows:

1. All claims against Respondents are denied in their entirety.
2. Shearson's counterclaim for damages against Claimant is denied in its entirety.

FORUM FEES

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

1. Forum fees in the amount of \$800.00 for 2 hearing sessions at \$400.00 per session are to be borne equally by all parties.
2. Respondents are further assessed a non-refundable filing fee of \$500.00 for the counterclaim.
3. Claimant deposited \$400.00 with the NASD and shall receive a credit for that amount. Therefore, the total amount due by Claimant is \$0.00.
4. Respondents deposited \$0.00 with the NASD for their counterclaim. Therefore, the total due by Respondents is \$900.00.

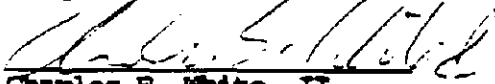
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Peter P. Harrington, Jr., Esq.	-	Chairperson/Public
Sumner J. Goffin, Esq.	-	Public
Charles E. White, II	-	Industry

Concurring Arbitrator's Signature

Name



Charles E. White, II

Executed on:

~~Date of Decision~~ _____

Date of Decision: July 27, 1992