

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edward & Janet Fine

91-02437

Name of Respondents

Shearson Lehman Brothers, Inc.
Robert Dearbaugh

REPRESENTATION

For Claimants Edward & Janet Fine: Anthony V. Trogan, Esq. of the law firm of Weisman Trogan Young & Schloss.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Robert Dearbaugh ("Dearbaugh"): Howard Hertz of the law firm Hertz, Schram & Saretsky, P.C.

CASE INFORMATION

Statement of Claim filed: August 7, 1991.

Claimants Edward & Janet Fine's ("Claimants") Submission Agreement signed on: July 29, 1991.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Robert Dearbaugh ("Respondents") on: December 10, 1991.

Respondent Shearson's Submission Agreement signed on: December 20, 1991.
Respondent Dearbaugh's Submission Agreement signed on: December 18, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: March 24, 1992, 2 sessions
May 11, 1992, 2 sessions
May 12, 1992, 3 sessions

Hearing Location: Marriott Hotel, Southfield, Michigan

CASE SUMMARY

Claimants alleged that they maintained an account with Respondent Shearson and that Respondents were fully aware that other than social security payments and limited income from bonds, the assets in their accounts at

Shearson and income therefrom represented everything Claimants had in the world. Claimants further alleged that Respondents were aware of Claimant Edward Fine's medical condition and the Claimants desire to preserve and protect their assets from risk and that Respondents recommended and insisted that Claimants purchase high risk speculative investments not suitable for them. Claimants further alleged that Respondents were guilty of violating the NASD Rules of Fair Practice, the New York Stock Exchange "Know Your Customer" Rule, Rule 10b-5 and Section 10(b) of the Securities and Exchange Act and Michigan Securities Law. Claimants further alleged Respondents were guilty of churning, breaching their fiduciary duty and common law fraud, and the acts of Respondents form the basis for the elements of a claim pursuant to the RICO statute.

Respondents maintained that between 1979 and 1985 many of Claimants' investments were "bond funds" and mortgage backed investments and that Claimant Janet Fine told Respondent Dearbaugh that Claimants also had treasury bill and/or treasury bond investments. Respondents further maintained Respondent Dearbaugh believed that Claimants' portfolio at Shearson comprised only a portion of Claimants' wealth, and Claimant Janet Fine discovered the potential income opportunities received by investing in limited partnerships, and that Claimants wanted to invest and did invest in Shearson Union Square, Shearson #2M Unit Trust High Yield Bond, Shearson Beverly Hills, Permian Partners and other investments. Respondents further maintained Claimants received a 9% payout and then a settlement in a class action lawsuit and dividends from the Shearson Union Square investment and lost slightly over \$3,000, excluding income they received from the Shearson #2M Unit Trust High Yield Bond. Respondents further maintained Claimants initially received a 9-10% distribution from their Shearson Beverly Hills investment; however, Beverly Hills passed a municipal ordinance which required extensive costs and caused expected distributions to be cut this year. Respondents maintained Claimants originally received a 13% return from Permian Partners which sold at \$9 per share but due to problems related to management wrongdoing the share value fell. Respondent further maintained Claimants sold their shares at 4 3/4 and a class action suit was instituted and investors will receive a settlement. Respondents further maintained that Respondent Dearbaugh fulfilled his obligations to Claimants by advising Claimant Janet Fine of the risks and furnishing her with a prospectus in each investment and that Claimant Janet Fine only made her stock purchases after (1) Respondent Dearbaugh fully informed her of the risks, (2) being furnished with prospectus and (3) having the opportunity to obtain her sons' advice. Respondents further maintained Claimant Janet Fine, not Respondent Dearbaugh controlled Claimants' accounts and the Claimants' account was non-discretionary and that Claimant Janet Fine refused to take corrective actions. Respondents further maintained that they did not breach any fiduciary duty owed to Claimants, there were no actionable RICO violations, and Respondent Shearson fully complied with its supervising duties.

RELIEF REQUESTED

Claimants requested 1) compensatory damages in the amount of \$55,000.00 as out of pocket losses; 2) interest at 12%; 3) all costs; 4) actual attorney fees as allowed by the Panel in an amount determined by the Panel; 5) exemplary and punitive damages as allowed by the Panel in an amount determined by the Panel; 6) RICO damages as allowed by the Panel in an amount determined by the Panel; 7) the rescision of all transactions and payment of all monies necessary to make Claimants whole.

Respondents requested that all claims against them be dismissed in their entirety and that Respondents be awarded costs and attorneys fees.

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. Respondents Shearson Lehman Hutton, Inc. and Robert Dearbaugh, jointly and severally, shall pay to the Claimants the sum of Thirty Seven Thousand Five Hundred 00/100 Dollars (\$37,500.00), representing damages and interest to date, plus \$900 for expert witness fees. The sale by Shearson Lehman to Claimants in May, 1987, of the Shearson Beverly Hills Medical Office Partners, L.P. is rescinded and Claimants shall transfer and assign to Shearson Lehman the 1,000 units now held by them without further consideration.
2. Respondents shall also pay to the Claimants \$10,000 as attorney fees, based on the authority of Prince v Heritage, 109 Mich App 189 (1991).
3. Claimants' request for exemplary and punitive damages is denied.
4. Claimants' request for damages under the RICO statute is denied.

FORUM FEES

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

7 sessions x 750 = \$5,250 minus hearing session deposit of \$750 = net \$4500 due.

The Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$4500 to represent forum fees.

Respondents are liable jointly and severally and shall reimburse Claimants the sum of \$950 which represents the hearing session deposit and the non-refundable filing fee previously deposited with the NASD, Inc.

Page 4.
Award #91-02437

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$200 non-refundable filing fee previously deposited by Claimants.


Respondents, jointly and severally, shall pay to the NASD, Inc. forum fees in the amount of \$4500.

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

Concurring Arbitrators' Signature

Name

Public/Industry


Harry A. Carson, Esq./Chairman


Public Arbitrator

Date of Decision: June 16, 1992

Page 4.
Award #91-02437

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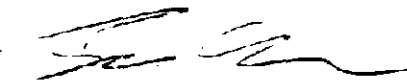
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Public/Industry



Brace K. Case, Esq.

Industry Arbitrator

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Page 4.
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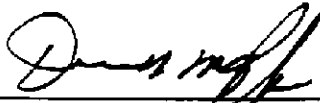
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Concurring Arbitrators' Signature

Name

Public/Industry



David M. Black, Esq.

Public Arbitrator

Date of Decision: June 16, 1992