

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Texvest Factors & Financial Services Corporation

and

-91-02519

Name of Respondents

Shearson Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

Claimant Texvest Factors & Financial Services Corporation was represented by Tim G. Sralla, Esq. of Fielding, Barrett & Taylor, Fort Worth, Texas.

Respondent Shearson Lehman Brothers, Inc. was represented by C.W. Flynn, Esq. of Locke, Purnell Rain Harrell, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about August 14, 1991. Response to Amended Answer was filed on or about September 30, 1992. Submission Agreement of Claimant Texvest Factors & Financial Services Corporation was signed on August 12, 1991 by Andrew J. Baxter.

Statement of Answer was filed by Respondent Shearson Lehman Brothers, Inc. on or about October 22, 1991. Amended Statement of Answer was filed on or about August 25, 1992. Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was signed on October 4, 1991 by Bari Jane Wolfe.

HEARING INFORMATION

The hearing was held on Thursday, February 4, 1993 for two (2) sessions and Friday, February 5, 1993 for two (2) sessions in Dallas, Texas for a total of four (4) sessions.

CASE SUMMARY

Texvest Factors & Financial Services Corporation ("Claimant") alleged that Respondent Shearson Lehman Brothers, Inc. ("Respondent") through James N. Darwin, II made material misrepresentations regarding the liquidity of DACO National Corp. ("DACO") stock and the availability of exceptions to Rule 144 of the Securities and Exchange Commission. Claimant specifically alleged that it relied on the representations of Darwin and made a loan to Global Assurance Corporation. Global has subsequently defaulted on the loan and Claimant could not liquidate the stock which has declined in value. Claimant alleged that Respondent violated the Securities Act of 1933, Texas Securities Act, the Texas Deceptive Trade Practices Act, was negligent, engaged in fraud, breached an implied warranty and breached its fiduciary duty to the Claimant.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that Mr.

Darwin specifically told Claimant's attorney that the DACO stock was illiquid and that the price was subject to great fluctuations. Shearson further stated that Claimant made the loan to Global based upon relationships among Claimant, Claimant's attorney and Global. Respondent also asserted the following affirmative defenses: unclean hands, contributory/comparative negligence/causation, waiver, estoppel and failure to mitigate.

RELIEF REQUESTED

Claimant requested an award of actual damages as follows: \$149,000.00 which represents lost principal, accrued interest on the sum from October 5, 1989 until paid at the note rate of 15% per annum, expenses incurred in attempting to collect the debt from Global, including attorney's fees, expert witness fees and court costs; reasonable attorney's fees under the Texas Deceptive Trade Practices Act, the Texas Securities Act and the Texas Business & Commerce Code; exemplary damages in an amount of no greater than \$1,000,000.00; and costs and expenses of expert witnesses.

Respondent requested that the claims asserted herein be dismissed and that it be awarded reasonable attorney's fees incurred in having to defend this frivolous claim, and any additional relief to which it is entitled.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) 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. The claims asserted in this matter against Respondent Shearson Lehman Brothers, Inc. shall be and hereby are dismissed in their entirety.
2. Claimant Texvest Factors shall be and hereby is liable for and shall pay to the Respondent Shearson Lehman Brothers, Inc. the sum of \$5,000.00 for attorney's fees incurred in defending this matter. In awarding attorney's fees, the panel considered the claim brought against Respondent to be frivolous in nature.
3. Each party shall bear all additional costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$3,000.00 which represents the balance of the forum fees assessed in this matter.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Ralph Steven Janvey
Ralph Steven Janvey, Esq.
Public Arbitrator, Presiding Chair

February 10, 1993

s/ Winston C. Fournier
Winston C. Fournier
Public Arbitrator

February 10, 1993

s/ James M. Tipton
James M. Tipton
Industry Arbitrator

February 12, 1993