

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Orville S. McKimurry

vs

NASD Arbitration
No.91-02639

Shearson Lehman Brothers, Inc.
Nicholas Maffeo

REPRESENTATION

For Claimant: Mr. Richard Sacks and Mr. James Sullivan, Esq.
- Investors Recovery Service

For Respondent: E. Scott Douglas, Esq. - Reesal, Young & Logan

CASE INFORMATION

Statement of Claim filed: August 26, 1991

Claimant's Submission Agreement signed on: November 19, 1991

Joint Statement of Answer filed by Respondents, November 15, 1991

Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: January 30, 1992

Respondent, Nicholas Maffeo's Submission Agreement signed on: November 19, 1991

HEARING INFORMATION

Pre-Hearing Conferences : None

Hearing Date/Sessions: March 27, 1992 - Three Sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant, Orville S. McKimurry (McKimurry) alleged that Respondent, Nicholas Maffeo (Maffeo) while employed by Respondent, Shearson Lehman Hutton (SLH) implemented an options trading strategy in Maffeo's account when he knew or should have known that McKimurry did not have the requisite background of sophistication to understand the complexity of trading options and stocks on margin. McKimurry's principle investment objectives were income and safety of principal. It is alleged that Maffeo churned the account by excessive trading and commission generation.

Respondents alleged that claimant was and is a sophisticated trader who took an active role in the handling of his account and that involved in both the selection of securities and in tracking his own investments. At

no time did Respondents exercise discretion in the account. Any losses incurred were the result of market price fluctuations beyond the control and responsibility of Respondents.

RELIEF REQUESTED

Claimant requested: An award of actual damages of \$62,538.00, which represents \$58,238.00, reasonable recovery fees of \$20,000.00 and punitive damages.

Respondents requested: Dismissal of the claim in its entirety, attorneys' fees and costs of suit.

OTHER ISSUES CONSIDERED AND 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. Each and every claim of Claimant, Orville S. McElmurry, against Respondent, Shearson Lehman Hutton, Inc. is dismissed.
2. Each and every claim of Claimant, Orville S. McElmurry, against Respondent, Nicholas Maffeo, is dismissed.
3. Claimant's claim for punitive damages is denied.
4. The NASD shall retain the \$650.00 previously deposited by Claimant with the NASD.

FORUM FEES

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

Forum fees Assessed Against: Respondent Shearson Lehman Brothers, Inc. is assessed forum fees in the sum of \$1,500.00 representing fees for three hearing sessions at \$500.00 each.

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

ARBITRATION PANEL

Public/Industry
Public Chairperson
Public
Industry

Concurring Arbitrators' Signatures

Debra D. Smith

Date of Decision: _____

Served April 22, 1992