



N.A.S.D. AWARD

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

Edward H. Leibowitz

91-02789

Name of Respondents

Shearson Lehman Brothers, Inc.
J. Kenneth Lyons

REPRESENTATION

For Claimant Edward H. Leibowitz: Gary J. Cucchiara, Esq. of the law firm of
Donovan & Cucchiara.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and J. Kenneth
Lyons ("Lyons"): Ralph P. Schiavo of Shearson Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed on September 5, 1991.

Claimant's Submission Agreement signed on August 26, 1991.

Statement of Answer filed by Respondents Shearson and Lyons on December 26,
1991.

Respondent Shearson's Submission Agreement signed on May 21, 1992.

Respondent Lyon's Submission Agreement signed on February 18, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: July 23, 1992, 2 Sessions.
July 24, 1992, 2 Sessions.

Hearing Location: National Association of Securities Dealers, Inc. offices
located in New York, New York.

CASE SUMMARY

Claimant alleged that pursuant to his employment agreement with E.F. Hutton & Co., Inc. ("Hutton"), Shearson's predecessor in interest, he was entitled to renewal commissions, with respect to sales of insurance products originally transacted by him, following his termination of employment with Hutton. Claimant further alleged that the employment agreement provided that it would inure to the benefit of any successor in interest to the business of Hutton. Claimant further alleged that in or about 1987 Shearson became the successor in interest to Hutton and thereby became Claimant's employer and that shortly thereafter Claimant terminated his employment with Shearson. Claimant further alleged that following his termination of his employment, Shearson failed to pay him the renewal commissions to which he was entitled and that Shearson and/or its agents, servants or employees altered policy numbers and business records in connection with insurance products coded to Claimant and assigned them to other servicing agents. Claimant further alleged that Shearson's conduct constituted intentional, malicious and tortious interference with Claimant's contractual relationship with Shearson, tortious interference with Claimant's prospective economic advantage, and unfair competition and business practices. Claimant further alleged that Respondent Lyons induced Claimant to assist Shearson in two litigation matters by representing to Claimant, by either words or actions, that Claimant's participation and assistance in said litigation would result in a satisfactory resolution of his request for renewal commissions. Claimant further alleged that as a result of Claimant's assistance both litigation matters were decided favorably to Shearson, that his request for renewal commissions was not satisfied and that Claimant suffered substantial monetary damages as a result of Lyons' wrongful, tortious and fraudulent conduct.

Respondents maintained that the Claimant breached his employment agreement with Shearson by pursuing insurance business outside the firm during his employment with Shearson and by obtaining accounts assigned to other financial consultants without approval. Respondents further maintained that upon the termination of Claimant's employment, Claimant further breached his employment agreement by reproducing Shearson documents and records without approval and taking the records with him. Respondents further maintained that as a result of Claimant's breach of his employment agreement he was entitled to nothing under the agreement. Respondent Shearson specifically moved to strike Claimant's request for punitive damages as punitive damages were an inappropriate remedy for a breach of contract action.

RELIEF REQUESTED

Claimant requested that an award be entered in his favor as follows:

1. The sum of \$314,130.00 for renewal commissions due on August 20, 1991, together with any payments which become due between August 20, 1991 and the rendering of a decision, plus interest accruing thereon.
2. Ordering Respondents to pay any and all prospective commissions due to Claimant, together with interest accruing thereon.
3. Awarding Claimant counsel fees and costs of arbitration.
4. Punitive damages as determined by the panel to be appropriate and just.

Respondents requested that the panel dismiss Claimant's Statement of Claim in its entirety and award Shearson attorney's fees and costs incurred in this arbitration.

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. All claims against Respondent Lyons are dismissed.
2. The panel finds for Claimant and against Shearson in the sum of One Hundred Sixty One Thousand Three Hundred Fifty Dollars and No Cents (\$161,350.00) in settlement of all claims relating to renewal commissions through 1996.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$750 = \$3,000 minus hearing session deposit of \$750.00
= net \$2,250.00 due.

Respondent Shearson be and hereby is liable and shall pay to the NASD the sum of \$2,250.00 to represent forum fees and shall pay to Claimant \$750.00 to reimburse Claimant his fees paid.

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

ARBITRATOR SIGNATURES



Marc R. Green, Esq.
Industry Arbitrator

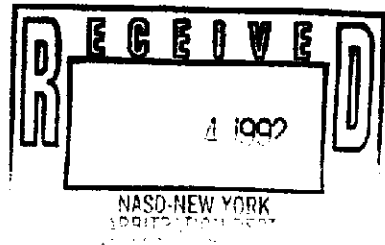


William E. O'Mara
Industry Arbitrator



Richard S. Peskin, Esq.
Industry Arbitrator

Date of Decision: August 5, 1992



STATE OF: New York
COUNTY OF: New York

S.S.:

On this 31 day of July, 1992, before me personally appeared **Marc R. Green Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

PHILIP J. CERAVOLO
Notary Public, State of New York
No. 60-6659120
Qualified in Westchester County
Commission Expires October 31, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 4th day of August, 1992, before me personally appeared **William E. O'Mara** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: New York
COUNTY OF: New York

ROSEMARY BELOTT
S.S.:
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 14, 1995

On this 30 day of July, 1992, before me personally appeared **Richard S. Peskin, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

MARTIN FISHMAN
NOTARY PUBLIC, State of New York
No. 1233960
Qualified in Nassau County
Commission Expires ~~Aug 31, 1993~~

Aug 31, 1993