



N.A.S.D. AWARD

Arbitration

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

Martin M. Kaufman

91-02834

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Shearson Lehman Brothers, Inc.
Andrew Rusin

Representation

For Claimant: Bruce I. Shaw, of Woodhill Supply, Inc.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), :
Todd A. Zuckerbrod, Esq. of Merrill Lynch, Pierce, Fenner & Smith.

For Respondent, Shearson Lehman Brothers Inc. ("Shearson"), : Jerry M.
Santangelo, Esq. of Neal Gerber & Eisenberg.

For Respondent, Andrew D. Rusin ("Rusin"), : Stephen M. Bales, Esq. of
Ziegler, Metzger & Miller.

CASE INFORMATION

Statement of Claim filed: September 11, 1991.

Claimant's Submission Agreement signed on: September 4, 1991.

Statement of Answer filed by Respondent, Merrill Lynch, Pierce, Fenner &
Smith, on: December 30, 1991.

Respondent, Merrill Lynch, Pierce Fenner & Smith's, Submission Agreement
signed on: December 27, 1991.

Statement of Answer filed by Respondent, Shearson Lehman Brothers Inc., on:
January 9, 1992.

Respondent, Shearson Lehman Brothers Inc.'s Submission Agreement signed on:
December 17, 1991.

Statement of Answer filed by Respondent, Andrew D. Rusin, on: January 8,
1992.

Respondent, Andrew D. Rusin's, Submission Agreement signed on: January 6,
1992.

HEARING INFORMATION

Pre-Hearing Conference: June 12, 1992 - One Session.
Hearing Dates/Sessions: June 22, 1992 - Two Sessions.
June 23, 1992 - Two Sessions.

Hearing Location: NASD Offices, Cleveland, Ohio.

CASE SUMMARY

Claimant alleged that his broker, Respondent, Andrew D. Rusin, breached his fiduciary duty to him. Claimant alleged that after attending a seminar given by Rusin, he began trading options with Rusin. Claimant alleged that Rusin told him he was making money and although he did not understand exactly what was happening, he went along with Rusin's recommendations.

Claimant alleged that the Controller of his company prepared a list of all the options traded by Rusin. This list indicated a loss of over \$15,000. Claimant alleged that when confronted with this loss, Rusin promised to be more careful in the future. Claimant alleged that after more losses had been incurred, he stopped using Rusin's services.

Claimant alleged that Rusin sold two stocks short, Compaq and Intel, without his knowledge. Claimant alleged that when his new broker made him aware of the short position, he closed the position at a loss of nearly \$50,000. Claimant alleged that Rusin breached his fiduciary duty to him by lying about his position in the option trading and by shorting two stock positions without his knowledge.

Respondent, Merrill Lynch maintained that subsequent to attending a seminar given by Rusin, Claimant indicated that he wished to invest with Rusin. Merrill Lynch maintained that the Claimant advised Rusin that he had traded options with other brokerage firms. Merrill Lynch maintained that all the trades Claimant executed through Rusin were authorized by the Claimant and were appropriate given Claimant's investment experience, net worth and stated investment objectives. Merrill Lynch maintained that the losses sustained by the Claimant occurred while his account was at Shearson.

Respondent, Shearson, maintained that the Claimant was an experienced investor and businessman. Shearson maintained that during the time that his account was at Shearson, the Claimant never voiced a single complaint. Shearson maintained that since Claimant's New Account Application had indicated an intention to trade options, a letter was sent to him explaining the commission costs and indicating the financial data and investment objectives that were placed on his new account form. With regard to the short purchases of Compaq and Intel, Shearson maintained that the transactions in the Claimant's account were done with his knowledge and consent, and were appropriate for his stated investment objectives, and past financial experience.

Respondent, Rusin, maintained that the Claimant attended his seminar on investing after which the Claimant began trading options with Rusin. Rusin maintained that the Claimant repeatedly told him that he had ten years experience in trading options, stocks and other forms of speculative investments. Rusin denied misleading the Claimant or suggesting to the Claimant that he was making money when he was not. Rusin maintained that the short sales of Compaq and Intel were made with the full knowledge and consent of the Claimant, after the risks were fully disclosed to him. Rusin maintained that the Claimant decided to sell short on his belief that the market was about to correct. Rusin maintained that the Claimant told him he maintained other brokerage accounts with margin balances that were used to speculate in the stock of corporations rumored to be take-over candidates. Rusin maintained that the Claimant was aware of all the activity in his account, and that all the trades were authorized by him. Rusin maintained that given the Claimant's investment objectives, prior investment experience and substantial net worth, all the investments in his account were proper and suitable.

RELIEF REQUESTED

Claimant requested damages in the amount of \$75,852.30, punitive damages and the costs Claimant has incurred in bringing this action.

Respondent, Merrill Lynch, requested that the Claim be dismissed in its entirety, that the costs of the arbitration be assessed against the Claimant and reasonable attorney's fees.

Respondent, Shearson, requested that the Claim be dismissed in its entirety and reasonable attorney's fees.

Respondent, Rusin, requested that the Claim be dismissed in its entirety, that the costs of this action be assessed against the Claimant and reasonable attorneys fees.

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 remain on file with the NASD.

Claimant's Motion for Leave to Amend the Claim was granted and amended on June 22, 1992 to include the above-referenced claim for punitive damages.

Respondents' Joint Motion for Leave to Amend their Answers was granted and amended on June 22, 1992 to include the above-referenced claim for attorney's fees.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claim is hereby dismissed in its entirety.
2. The Claim for punitive damages is hereby denied.
3. Claimant is hereby liable and shall pay to the Respondents attorneys fees as follows:
 - a. To Respondent, Merrill Lynch, Pierce, Fenner & Smith: \$5,000.00.
 - b. To Respondent, Shearson Lehman Brothers, Inc.: \$15,700.00.
 - c. To Respondent, Andrew D. Rusin: \$7,777.50.

Attorneys fees are awarded in reliance on Synergy Gas Co. v. Sargo 853 F. 2d 59 (2nd Cir. 1988) wherein the Court, applying New York law, upheld an arbitrator's award for attorney's fees.

In addition, the arbitrators' found that the Claimant was not truthful, that he failed to timely comply with discovery requests and that his claim was frivolous.

4. All other claims and counterclaims are hereby denied in their entirety.

FORUM FEES

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

4 sessions X \$500 = \$2,000 minus hearing session deposit of \$500 = net \$1,500 due. Pre hearing conference fee of \$300. Total due: \$1,800.

1. Forum fees are hereby assessed against the Claimant. Claimant is hereby liable and shall pay to the NAME the amount of \$1,800 (ONE THOUSAND EIGHT HUNDRED DOLLARS AND 00/XX).

Concurring Arbitrator's Signature
Robert K. Beattie

Robert K. Beattie

Industry Arbitrator

Date of Decision August 19, 1992

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claim is hereby dismissed in its entirety.
2. The Claim for punitive damages is hereby denied.
3. Claimant is hereby liable and shall pay to the Respondents attorneys' fees as follows:
 - a. To Respondent, -Merrill Lynch, Pierce, Fenner & Smith: \$5,000.00.
 - b. To Respondent, Shearson Lehman Brothers, Inc.: \$15,700.00.
 - c. To Respondent, Andrew D. Rusin: \$7,777.50.

Attorneys fees are awarded in reliance on Synergy Gas Co. v. Sasso 853 F. 2d 59 (2nd Cir. 1988) wherein the Court, applying New York law, upheld an arbitrator's award for attorney's fees.

In addition, the arbitrators' found that the Claimant was not truthful, that he failed to timely comply with discovery requests and that his claim was frivolous.

4. All other claims and counterclaims are hereby denied in their entirety.

FORUM FEES

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

4 sessions X \$500 = \$2,000 minus hearing session deposit of \$500 = net \$1,500 due. Pre hearing conference fee of \$300. Total due: \$1,800.

1. Forum fees are hereby assessed against the Claimant. Claimant is hereby liable and shall pay to the NASD the amount of \$1,800 (ONE THOUSAND EIGHT HUNDRED DOLLARS AND 00/100).

Concurring Arbitrator's Signature
Joseph W. Grossman

Public Arbitrator

Date of Decision August 19, 1992

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claim is hereby dismissed in its entirety.
2. The Claim for punitive damages is hereby denied.
3. Claimant is hereby liable and shall pay to the Respondents attorneys fees as follows:
 - a. To Respondent, Merrill Lynch, Pierce, Fenner & Smith: \$5,000.00.
 - b. To Respondent, Shearson Lehman Brothers, Inc.: \$15,700.00.
 - c. To Respondent, Andrew D. Rusin: \$7,777.50.

Attorneys fees are awarded in reliance on Synergy Gas Co. v. Sargo 853 F. 2d 59 (2nd Cir. 1988) wherein the Court, applying New York law, upheld an arbitrator's award for attorney's fees.

In addition, the arbitrators' found that the Claimant was not truthful, that he failed to timely comply with discovery requests and that his claim was frivolous.

4. All other claims and counterclaims are hereby denied in their entirety.

FORUM FEES

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

4 sessions X \$500 = \$2,000 minus hearing session deposit of \$500 = net \$1,500 due. Pre hearing conference fee of \$300. Total due: \$1,800.

1. Forum fees are hereby assessed against the Claimant. Claimant is hereby liable and shall pay to the NASD the amount of \$1,800 (ONE THOUSAND EIGHT HUNDRED DOLLARS AND 00/100).

Concurring Arbitrator's Signature
Robert E. Bingham, Esq.

Public Chairperson

Date of Decision August 19, 1992