

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimants

Ruth Butler and  
Gregory Butler

and

91-02966

Name of Respondents

Shearson Lehman Brothers, Inc. and  
Scott Sinclair

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REPRESENTATION OF PARTIES

Claimants were represented by Timothy J. Schutz, Esq., of Hanes & Schutz, Colorado Springs, Colorado.

Respondent Shearson Lehman Brothers, Inc. was represented by John S. Lutz, Esq. of Kelly, Stansfield & O'Donnell, Denver, Colorado.

Respondent Scott Sinclair did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about September 24, 1991. Claimants' undated Submission Agreement signed by Greg Butler and Ruth Butler.

Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. on or about November 8, 1991. Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on November 6, 1991 by William A. Hohauser.

Statement of Answer filed by Respondent Scott Sinclair on July 31, 1992. Respondent Scott Sinclair did not submit an executed submission agreement.

HEARING INFORMATION

The hearing was held on Thursday, July 30, 1992 for two (2) sessions, Friday, July 31, 1992 for four (4) sessions in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

Claimants alleged that Respondent Scott Sinclair an employee

of Respondent Shearson Lehman Brothers, Inc. engaged in unauthorized trading in their accounts, that the trading in their accounts was excessive in size and frequency and that the trading was unsuitable for them in light of their investment objectives. Claimants alleged that Respondents breached their fiduciary duty, breached their contract with them, engaged in common law fraud, and violated Section 10(b) of the Securities Exchange Act of 1934. Claimants specifically alleged that Respondent Scott Sinclair engaged in unauthorized option and margin trading in their personal and IRA accounts.

Respondent Shearson Lehman Brothers, Inc. denied the allegations set forth in the Statement of Claim. Shearson further stated that the Claimants knew of and authorized each and every transaction in their accounts, including the option trades and the limited partnership purchases. Shearson also stated that the transactions were suitable for the Claimants in light of their liquid net worth and net worth and their business and investment experience. Shearson stated that it properly supervised the accounts of Claimants and asserted the following affirmative defenses: The Statement of Claim fails to state a cause of action upon which relief can be granted; authorization; assumption of the risk; estoppel; waiver; ratification; failure to mitigate; laches; accord and satisfaction; and contributory negligence.

Respondent Scott Sinclair stated that all transactions were entered into Ruth and Greg's foreknowledge and approval. Mr. Sinclair also stated that all risks associated with the transactions were explained to the Claimants.

#### RELIEF REQUESTED

Claimants requested an award in the amount of \$15,000.00 in compensatory damages and \$10,000.00 in punitive damages for the activities in the individual account of Ruth Butler; \$30,000.00 in compensatory damages and \$15,000.00 in punitive damages for the activities in the joint account of Ruth Butler and Gregory Butler; \$6,000.00 in compensatory damages and \$5,000.00 in punitive damages for the activities in the IRA account of Gregory Butler; \$7,000.00 in compensatory damages and \$5,000.00 in punitive damages for the activities in the IRA account of Ruth Butler; interest; costs; and attorney's fees.

Respondent Shearson requested that the claims be denied in their entirety and that costs and fees be assessed against Claimants.

Respondent Scott Sinclair requested that the claims asserted against him be denied.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has determined that Respondent has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Scott Sinclair had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

The panel considered the Motion to Bar Respondent Scott Sinclair From Presenting any Matter, Arguments or Defenses which was filed by the Claimants on or about April 6, 1992 and Mr. Sinclair's response thereto which was transmitted via facsimile to the NASD after the close of business, July 29, 1992 and heard arguments by counsel. The panel accepted the Answer submitted by Mr. Sinclair.

Respondent Scott Sinclair did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

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. Shearson Lehman Brothers, Inc. shall be and hereby is liable for and shall pay to the Claimants the total sum of \$10,389.00 (Ten thousand three hundred eighty-nine dollars) in the following manner:
  - a. \$6,269.00 to the IRA account of Claimant Ruth Butler.
  - b. \$4,120.00 to the IRA account of Claimant Gregory Butler.

c. Upon receipt of the above stated sums the Claimants shall direct the transfer of all rights and interest in the following securities held in their respective IRA accounts; Shopco Regional Malls Limited Partnership, Energy Assets IV LP, and Silver Screen Partners IV LP.

2. Respondents Shearson Lehman Brothers, Inc. and Scott Sinclair shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$2,500.00 (Two thousand five hundred dollars).
3. Respondent Scott Sinclair shall be and hereby is liable for and shall pay to the Claimants the sum of \$2,500.00 (Two thousand five hundred dollars).
4. Each party shall bear its own costs, expenses and attorneys 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 \$150.00 and shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimants. Claimants shall pay to the NASD the sum of \$1,000.00 and Respondents Shearson Lehman Brothers and Scott Sinclair shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees.

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring in all paragraphs above.

Dated:


8/19/92



Charles G. Michaels, Esq.  
Presiding Chair  
Public Arbitrator

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John L. Worcester  
Public Arbitrator

**Dated:**

Albert T. T. Cook, Jr.  
Industry Arbitrator

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John L. Worcester  
Public Arbitrator

Concurring in paragraph 4 above and the assessment of forum fees  
and dissenting from paragraphs 1, 2, and 3 above.

Dated:

8-24-92

Albert T. T. Cook, Jr.  
Albert T. T. Cook, Jr.  
Industry Arbitrator