

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Peter and Antanina Gencarelli :

Claimants :

vs. :

Shearson Lehman Brothers :

Respondent :  
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CASE #91-03037  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 30, 1991, Claimants, Peter and Antanina Gencarelli, who appeared Pro Se, alleged that on August 14, 1986 they contacted Respondent, Shearson Lehman Brothers for the sole purpose of purchasing \$5,000.00 worth of Gabelli Equity Trust Inc. at \$10.00 per unit because they believed it would make an excellent long term retirement investment, which they conveyed to Respondent's registered representative Alan Cohen, who agreed with their determination. Claimants further alleged that on June 12, 1987, less than a year later, Respondent's registered representative, Mr. Cohen contacted them to recommend the sale of the Gabelli Equity investment and in turn, solicited them to purchase the new issue Permian Partners L.P. by misrepresenting its future value and withholding its risks of loss. Claimants contended that Respondent, by and through Mr. Cohen, informed them that this new issue had a high dividend payout and was a secure investment with growth opportunities. Claimants further contended that Respondent withheld relevant facts about the Permian investment and only emphasized the rewards, not the risks. Claimants asserted that Respondent placed them in an unsuitable investment for their investment objectives, compounded by taking them out of the investment they expressly wanted, thus, creating losses when Claimants tendered the security for 3 5/8.

Respondent, Shearson Lehman Brothers by and through their in-house counsel, William A. Hohauser, Esq., maintained that in August 1986 Claimants, Peter and Antanina Gencarelli contacted their broker, Alan Cohen for their specific purpose of purchasing 500 shares of Gabelli Equity Trust Inc. at which time, Claimants indicated that their investment objective was for appreciation with risk. Respondent further maintained that Claimants informed Mr.

Cohen that they were investors who were willing to take risks in order to make money. Respondent contended that as the price of Gabelli Equity investment dropped, Claimants became concerned about this investment, at which time, Mr. Cohen suggested the purchase of Permian Partners Limited Partnership because they would receive a dividend payout. Respondent further contended that Claimants received a confirmation of their purchase of Permian along with a prospectus for this issue and at no time did they inform Respondent of their dissatisfaction with the security until four years after the purchase. Respondent asserted that if Claimants had informed them of their dissatisfaction, they could have cancelled the trade or liquidated the shares at once. Respondent further asserted that at all times, Claimants were in control of their account and made all their own investment decisions, therefore, Respondent cannot be held liable.

#### RELIEF REQUESTED

Claimants, Peter and Antanina Gencarelli requested \$3,264.00 in actual damages.

Respondent, Shearson Lehman Brothers requested the claim be dismissed in its entirety and they be awarded costs, including attorney's fees.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George R. Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 3, 1991 and by the Respondent on April 16, 1992.


And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants, Peter and Antanina Gencarelli against Respondent, Shearson Lehman Brothers are dismissed.
2. The parties shall bear their respective costs including attorney's costs.

3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Peter and Antonina Gencarelli shall be retained by the NASD, Inc.

AFFIRMATION

I, GEORGE R. FREUND, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: June 22, 1992