

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Rolf Olson, Individually and as
Trustee and Beneficiary of the
Rolf Olson, P.C. Pension and
Profit Sharing Trusts

vs.

NASD #91-03048

Name of Respondents

Shearson Lehman Brothers, Inc.
Carl Martens

REPRESENTATION

For Claimant: Fredrick D. Huebner, Esq., Halsell, Fetterman, Martin, Todd &
Hokanson, Seattle, Washington.

For Respondents: Jerry B. Hodson, Esq., Miller, Nash, Wiener, Hager &
Carlson, Portland, Oregon.

CASE INFORMATION

Statement of Claim filed: September 30, 1991
Amended Claim filed: June 9, 1992
Claimant's Submission Agreement signed: October 17, 1991
Joint Statement of Answer filed: February 4, 1992
Joint Answer to Amended Claim filed: June 25, 1992

Respondents' Submission Agreements signed:
Shearson Lehman Brothers: January 28, 1992
Carl Martens: February 3, 1992

HEARING INFORMATION

Hearing Date/Sessions: July 21, 1992 (two sessions)
July 22, 1992 (two sessions)

Hearing Location: Portland, Oregon

CASE SUMMARY

Claimant alleged breach of fiduciary duty under ERISA, violation of the Oregon Securities Act (ORS 59.115 and 59.135), violation of the Securities Exchange Act of 1934, Section 10(b) and Rule 10b-5, breach of contract and negligence with respect to investments in the preferred stock of Unisys.

Respondents denied all allegations. Respondents asserted that under ERISA, Claimant Olson, as trustee, did not disclose any intent to delegate his fiduciary duties to Respondents, so Respondents did not breach any fiduciary duty under ERISA. Respondents further asserted that the state law claims for breach of fiduciary duty, breach of contract and negligence are preempted under ERISA and should be dismissed. Respondents also asserted that the claims were barred by the statute of limitations under both Oregon law and federal law.

RELIEF REQUESTED

Claimant requested damages of \$28,553.48, plus interest at 12%, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims and an award to them of costs of arbitration and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive copies of the Award while the original remains on file with the NASD.

Attached hereto and made a part of this Award is the preliminary decision rendered by the arbitrator on July 28, 1992.

AWARD

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

1. Respondent is liable for and shall pay to Claimant the sum of \$28,553.85 plus interest at 9%.
2. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$300 hearing session fee previously deposited as an assessment of forum fees for 1 session.

ARBITRATION PANEL

Name

Edward H. Howell

Public/Industry

Public Arbitrator

Edward H. Howell
Edward H. Howell

Date of Decision: Aug. 21, 92

Served August 28, 1992

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6 IN THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
DEPARTMENT OF ARBITRATION

7 In the matter of the arbitration)
8 between,)

) No. 91-03048

9 ROLF OLSON, individually and as)
Trustee and Beneficiary of the)
10 ROLF OLSON, P.C., PENSION AND)
PROFIT SHARING TRUSTS,)

) AWARD

11 Claimant,)

12 v.)

13 CARL MARTENS, a registered)
14 representative; and SHEARSON)
LEHMAN BROTHERS, INC., a member)
15 firm,)

16 Respondents.)

17 This matter was heard on July 21 and July 22, 1992,
18 in Portland, Oregon.

19 I find that claimant and respondents agreed that
20 respondents would sell and claimant would buy only stock on
21 Shearson's recommended list. That agreement was breached.

22 I find that respondents had a duty to claimant to
23 advise him that UNISYS was in a deteriorating financial condi-
24 tion and that they failed to do so.

25 Claimant is entitled to damages in the amount of
26 \$28,553.85, plus interest at 9 percent.

1 Claimant is not awarded attorney fees.

2 DATED this 28th day of July, 1992.

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4 Edward H. Howell
5 Edward H. Howell, Arbitrator
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