

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

Estate of Max Fisher, Charlotte Isler
as Executrix

vs.

Case #
91-03265

Name of Respondents

Shearson Lehman Brothers, Inc.
Ben Orland

REPRESENTATION

For Claimant: Joseph H. Keenan, Esq. of the law firm of Bochat & Keenan.

For Respondents: Arthur C. Schupbach, Esq. of the law firm of Schupbach,
Williams & Pavone.

CASE INFORMATION

Statement of Claim filed: October 17, 1991.
Claimant's Submission Agreement signed on: October 30, 1991.

Joint Statement of Answer filed by Respondents, Shearson Lehman Brothers and
Ben Orland on: February 24, 1992.
Respondent, Shearson Lehman Brothers' Submission Agreement signed on:
February 6, 1991.
Respondent, Ben Orland's Submission Agreement signed on February 21, 1991.

HEARING INFORMATION

Hearing Date/Sessions: June 3, 1992, 2 Sessions.

Hearing Location: National Association of Security Dealers, Inc. ("NASD")
offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that upon the death of Max Fischer and the appointment of
his daughter, Charlotte Isler (Isler), as Executrix of his estate, Isler
contacted Respondent, Ben Orland (Orland), regarding the cancelation of all

open positions in accounts held by Respondent, Shearson Lehman Brothers (SLB). Claimant alleged that because Isler was unsophisticated in the investment arena and therefore relied solely on Respondent Orland's advice, that all open positions in the account would be closed out immediately. Claimant alleged that Respondent Orland failed to disclose to Isler that there were 18 March 80 Pfizer Call option contracts maintained in the account until they were exercised and the account debited \$39,027.44. Claimant alleged that no documents were ever requested of Isler as a prerequisite to closing down all open positions held in the account. Claimant alleged that at no time did Respondent Orland advise Isler that she needed any type of testamentary letters to enable her to execute any trades in her father's account and that Respondents executed trades anyway without obtaining any documents. Claimant alleged that Respondent Orland neglected to close-out these option positions despite assuring claimant that all positions would be closed.

Respondents maintained that at no time did they advise the claimant that all positions would be closed out. Respondents maintained it would not have been legally permissible to do so until Letters of Testamentary were issued to the executor named in Max Fischer's will. Respondents maintained that claimant failed to seek appointment as preliminary executor of the estate and failed to take any other reasonable steps to address the situation of which she complains. Respondents further maintained that Isler is an experienced investor who knew or should have been able to recognize the positions in the account. Respondents maintained that Isler ratified all positions in the account with full knowledge of all material facts with respect thereto. Respondents further maintained that the decision to purchase the Pfizer stock on the open market was a joint decision of Isler and her attorney which resulted in no actual loss to the claimant as she retained ownership over the original shares. Respondents maintained that no other trades were executed before Isler was appointed executrix other than the assignment of the Pfizer options and the purchase of the Pfizer Shares which was done with the approval of Isler and her attorney.

RELIEF REQUESTED

Claimant requested the following relief against Respondents, jointly and severally:

- a) In excess of \$40,000.00 for actual damages lost as a result of their failure to close out the positions in the estate account. This figure includes \$6,891.95 in premiums which were earned when 18 March 80 Pfizer call options were sold in July 1990 and August of 1990;
- b) Reasonable attorney fees;
- c) Interest from February 21, 1991 to June 3, 1992 at 6% which equals \$2,996.00;

d) Other costs and disbursements;

e) Any other relief as the arbitrators may deem just and proper.

Respondents requested that the Statement of Claim be dismissed and that they be awarded their attorney's fees and costs in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that 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 originals 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) The claims by the claimant against the respondents are hereby dismissed;
- 2) Costs are denied;
- 3) Interest is denied;
- 4) All claims for attorney fees are denied.

FORUM FEES

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

1. Forum fees in the amount of \$800.00 for two hearing sessions at \$400.00 per session are assessed against Respondent, Shearson Lehman Brothers, Inc.
2. Filing fee of \$120.00 is also assessed against Respondent, Shearson Lehman Brothers.
3. Shearson is further assessed \$400.00 for postponement of the April 10, 1992 hearing, which has been paid.
4. Shearson shall satisfy this assessment by reimbursing the Claimant \$520.00 which was previously deposited with the NASD and by remitting the

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balance, \$400.00, to the NASD.
2 sessions X \$400.00 = \$800.00 minus hearing session deposit of \$400.00 = net
\$400.00 due.

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

Concurring Arbitrator's Signature
Name

Robina Fedora Asti

Robina Fedora Asti
Industry Arbitrator

Date of Decision: July 1, 1992

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balance, \$400.00, to the NAGD.

2 sessions X \$400.00 = \$800.00 minus hearing session deposit of \$400.00 = net \$400.00 due.

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

Concurring Arbitrator's Signature
Name


Cynthia L. Hayes, Esq.
Chairperson, Public Arbitrator

Date of Decision: July 1, 1992

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2 sessions @ \$400.00 = \$800.00 minus hearing session deposit of \$400.00 = net
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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Edward M. Miller
Edward M. Miller
Edward M. Miller
Public Arbitrator

Date of Decision: July 1, 1992