

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ruth F. Balet

vs.

Case #
91-03677

Name of Respondents

Shearson Lehman Brothers, Inc.
James Joyce

REPRESENTATION

For Claimant, Ruth F. Balet ("Balet"), Ieuan G. Mahoney, Esq. from the law firm of Sherburne, Powers & Needham.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and James Joyce ("Joyce"), R. Scott Henderson, Esq. from the law firm of Bingham Dana & Gould.

CASE INFORMATION

Statement of Claim was filed on November 20, 1991.
Claimant's Submission Agreement was signed on November 16, 1991.
Amended Statement was filed on December 30, 1991.
Claimant's Opposition to Respondents' Motion to Dismiss was filed July 1, 1992.

Joint Statement of Answer was filed by Shearson and Joyce on January 30, 1992.
Shearson's Submission Agreement was signed on February 6, 1992.
Joyce's Submission Agreement was signed on January 13, 1992.

HEARING INFORMATION

Hearing Dates/Hearing Sessions: September 21, 1992 - Two sessions
October 8, 1992 - Two sessions
October 9, 1992 - Two sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant seeks to recover damages as a result of Respondents' alleged breach of fiduciary duty, excessive trading, unsuitable trading, unauthorized trading and material misrepresentation and omissions. Claimant also seeks damages based upon common law fraud and violations of federal and state securities laws.

Claimant states that she retired in 1972 from her teaching career where she did not earn more than \$12,000.00 per year. Claimant also states that after her retirement, she lived on fixed income which consisted of \$1,596 plus dividends and interest from her Shearson portfolio and a treasury fund. Claimant alleges that she informed Joyce that she was retired, did not understand the stock market and was relying on him. Claimant also alleges that she informed Joyce that she was interested in secure, steady income from the portfolio. Claimant alleges that Joyce disregarded her investment objectives and that the average income from the portfolio declined from \$627.70 per month in 1985 to \$128.49 in 1987.

Respondents deny the allegations of wrongdoing set forth in the Amended Statement of Claim. Respondents argue that Claimant, together with her husband and son, actively monitored her account, discussed with Joyce specific investments and overall strategy, and knew, understood and accepted the transactions in her account.

Respondents state that Joyce was Claimant's account executive while he was employed at Merrill Lynch Pierce Fenner & Smith in 1981. Respondents state that when Joyce left Merrill Lynch and joined Shearson, Claimant told him that she was unhappy with her new Merrill Lynch broker and transferred her account to Shearson. Respondents also allege that Claimant then informed Joyce that she wanted her investments directed towards growth rather than income which she confirmed after her marriage in 1986. Respondents also allege that in 1988, Claimant changed her investment objective so that her investments would become "more income oriented".

Respondents further allege that Joyce fully disclosed the risks as well as the potential rewards of the investment and discussed them with Claimant prior to every trade. Respondents contend that the investments were consistent with and suitable for Claimant in light of her financial circumstances and investment objectives.

Respondents argue that the allegation of fraud is insufficient as a matter of law and must be dismissed. In addition, Respondents argue that any fraud claims and any claim under the Massachusetts Blue Sky Law are barred by the statute of limitation based upon Lampf, Pleva, Prupis & Petigrow vs. Gilbertson, 111 S.Ct. 2773 (1991) and M.G.L. ch.110A Section 410(a) (2), respectively. Respondents argue that the claim for "out-of-pocket losses", Chapter 93A, punitive damages are not available to Claimant as a matter of law. Respondents assert ten affirmative defenses.

RELIEF REQUESTED

Claimant requests an award jointly and severally against Respondents for \$57,280.55 in out of pocket losses, \$42,000.00 in market adjusted damages, \$50,000.00 in punitive damages, interest, costs including filing fees and all forum fees and such other relief as this arbitration panel deems just and proper. In her Amended Statement of Claim, Claimant seeks attorney's fees under

Massachusetts General Laws Chapter 93A.

Respondent requests that the Arbitrations dismiss the Amended Statement of Claim and award Respondents costs and disbursements including reasonable attorney's fees.

In her opposition to Respondents' Motion to Dismiss the claims, Claimant argues that the claims were timely filed and that the Motion should be denied.

OTHER ISSUES CONSIDERED AND 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 originals remain on file with the NASD.

AWARD

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

1. Respondents, Shearson and Joyce, are jointly and severally liable and shall pay Claimant **SIXTEEN THOUSAND SEVEN HUNDRED AND SIXTY ONE DOLLARS AND ZERO CENTS (\$16,761.00);**

2. The claim for interest is denied;
3. The claim for punitive damages is denied;
4. The claim for attorney's fees is denied;
5. The claim for costs is denied.

FORUM FEES

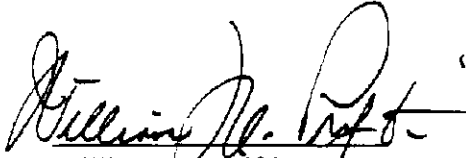
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Claimant is assessed a non-refundable filing fee of \$200.00;
2. Forum fees in the amount of \$4,500.00 for 6 hearing sessions at \$750.00 per session are assessed and shall be borne equally by the parties so that Claimant is assessed \$2,250 and Respondents are jointly and severally assessed \$2,250.00;
3. Claimant deposited \$950.00 with the NASD and shall received a credit in that amount.

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

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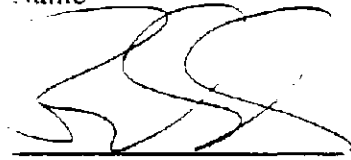
Concurring Arbitrator's Signature
Name


William M. Prifti, Esq.
Chairperson-Public

Date of Decision December 15, 1992

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Concurring Arbitrator's Signature
Name

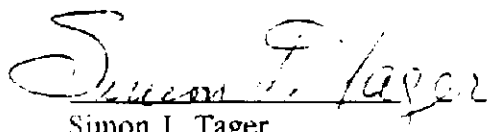
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Terri W. Anderholm
Industry Arbitrator

Date of Decision December 15, 1992

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Concurring Arbitrator's Signature
Name

A handwritten signature in cursive script, appearing to read "Simon J. Tager", written in dark ink.

Simon J. Tager
Public Arbitrator

Date of Decision December 15, 1992