

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Teresa Scuderi

91-03851

Name of Respondents

Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman Hutton, Inc.
Charles W. Kusche, III

REPRESENTATION

Claimant Teresa Scuderi ("Claimant") was represented by: Joseph F. Keenan, Esq. of Bochat and Keenan.

Respondent Shearson Lehman Brothers, Inc. ("Shearson") was represented by: John J. Murphy III, Esq. of Stradley, Ronon, Stevens & Young.

Respondent Charles W. Kusche, III ("Kusche") was represented by: William A. DeLorenzo, Esq., Attorney at Law.

CASE INFORMATION

Statement of Claim filed on: December 4, 1991

Amended Statement of Claim filed on: September 18, 1992

Claimant's Submission Agreement signed on: November 19, 1991

Statement of Answer filed by Respondent Shearson on: March 16, 1992

Respondent Shearson's Submission Agreement signed on: March 13, 1992

Statement of Answer filed by Respondent Kusche on: March 16, 1992

Respondent Kusche's Submission Agreement signed on: March 12, 1992

HEARING INFORMATION

Hearing Dates/Sessions: July 12, 1993, 2 sessions

July 13, 1993, 2 sessions

Hearing Location: Offices of the NASD, Philadelphia, PA.

CASE SUMMARY

In her original Statement of Claim, Claimant alleged claims against Shearson, Drexel Burnham Lambert ("Drexel"), PaineWebber, Inc. ("PaineWebber") and Kusche. Claimant alleged that in 1981, she opened an account with Shearson and its registered representative, Respondent Kusche, and deposited \$360,000.00, principally consisting of proceeds resulting from the recent death of her husband. Claimant alleged that her investment objective at the time was preservation of capital with income. Claimant alleged that Kusche remained Claimant's representative until July, 1989. Claimant alleged that after Kusche left Shearson to join Drexel in May, 1987 her accounts were transferred to Drexel. Claimant avers that she totally relied upon Kusche for all investment decisions during the years 1981 through 1989.

Claimant alleged that she totally relied on Kusche for investment advice. During the years that Claimant's account was at Shearson, Claimant alleged that Respondent Kusche induced her to invest in numerous limited partnerships. She alleged that these limited partnership investments were unsuitable for her, that the risks of investing in the Balcor and Damson limited partnerships were misrepresented to her, that there was a failure to disclose illiquidity and risk of loss. She alleged that Respondents are liable for common law fraud, breach of fiduciary duty, unauthorized trading, negligence, breach of contract, violations of 10b and 10b-5 of the federal securities laws, failure to supervise, and violations of the NASD Rules of Fair Practice.

In her Amended Statement of Claim of September 18, 1992, Claimant removed PaineWebber as a Respondent. (By operation of law, the bankruptcy Petition of May 29, 1990 filed by Respondent Drexel has removed that firm as a Respondent in these proceedings). In the Amended Statement, Claimant averred that she never received a prospectus for any of the limited partnership investments, that from 1983 through 1989, Respondent engaged in unauthorized options and stock trading and churned her account.

Respondent Shearson in its Answer maintained that all investment decisions were made by Claimant, that all trades were authorized and consented to by Claimant, that the limited partnership investments were suitable for Claimant at the time of the investments, that Claimant was made aware of the risks and

provided with prospecti prior to the investments.

Shearson asserted, in a cross-claim against Respondent Kusche, that it "reserves the right to proceed by way of contribution or indemnification against Kusche for any amount it may be adjudged liable to Claimant and any expenses thereby incurred."

Respondent Kusche maintained that all of Claimant's investments were made with her consent and prior approval, that investments were made in accordance with Claimant's investment objectives. Respondent Kusche asserted a cross-claim against Respondent Shearson in which he maintained that any liability of Kusche in connection with the Balcor and Damson portions of the claim is purely vicarious and that he is entitled to indemnification from Shearson for any amount, in connection with Balcor and Damson, which he may be adjudged liable to Claimant and any expenses thereby incurred.

RELIEF REQUESTED

Claimant requested damages totalling in excess of \$300,000.00, plus interest, costs and attorneys' fees.

Respondent Shearson requested dismissal of the claim in all respects and reserved the right to proceed by way of contribution or indemnification against Kusche.

Respondent Kusche requested dismissal of the claim, costs and indemnification.

OTHER ISSUES CONSIDERED & 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.

Both Respondents Kusche and Shearson have filed a Motion to Dismiss as to those claims that are out of time pursuant to Section 15 of the NASD Code of Arbitration Procedure.

At the hearing, Respondents moved to dismiss those claims time barred pursuant to the Lampf decision.

Panel's Ruling on Motions:

The Motions to Dismiss pursuant to Section 15 of the NASD Code of Arbitration are granted in favor of Respondents as to all claims that arose before December 4, 1985. As to all claims that arose after said date, the Motions are denied.

As to all Federal securities claims, the Motions to dismiss is granted as to those claims which are within the purview of the holding of Lampf, Pleva, Prupis & Pettigrew v. Gilbertson, __ U.S.__, 111 S. Ct. 2773 (1991).

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. That Respondents Shearson and Kusche are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of SEVENTY THOUSAND AND 00/100 DOLLARS (\$70,000.00); this amount is inclusive of interest.
2. That, in addition to the damages assessed in paragraph one above, Respondent Kusche is liable to the Claimant and shall pay to the Claimant the sum of TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) for activities that occurred after Respondent Kusche left the employ of Respondent Shearson. This amount is inclusive of interest.
3. The parties shall bear their own costs except for those specifically stated herein.
4. That Respondents cross-claims for indemnification are denied in their entirety.

FORUM FEES

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

Four (4) hearing sessions x \$750 = \$3,000

All costs are to be assessed equally against each party. Claimant is

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assessed forum fees in the amount of \$1,000; however, she is entitled to offset this amount with her previously filed hearing session deposit of \$750 so that the amount due from them Claimant is \$250. Shearson is assessed forum fees in the amount of \$1,000. Kusche is assessed forum fees in amount of \$1,000.

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

Concurring Arbitrator's Signature

Name

Public/Industry


Joseph R. Lally

Date of Decision: _____

NASD Date of Decision: August 27, 1993

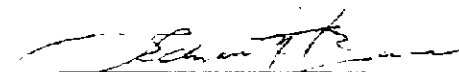
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Concurring Arbitrator's Signature

Name

Public/Industry


Edward T. Borer

Date of Decision: _____

NASD Date Decision: August 27, 1993

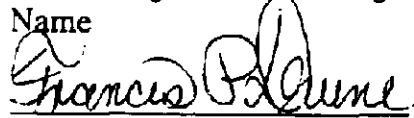
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Concurring Arbitrator's Signature

Name

Public/Industry



Francis P. Devine, III

Date of Decision: _____

NASD Date of Decision: August 27, 1993