

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

S.F. Ford

NASD Arbitration
No. 91-04101

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Robert Pacilio

REPRESENTATION

For Claimant: Eugene R. Salmonsens, Esq., Beverly Hills, California

For Respondent Shearson Lehman Brothers, Inc.: Stephen Young, Esq.
and Michele R. Fron, Esq., Keesal, Young & Logan, Long Beach,
California

CASE INFORMATION

Statement of Claim filed: December 27, 1991
Memorandum of Fact and Law in Opposition to Respondent Shearson's
Request for Dismissal filed: December 11, 1992
Claimant's Reply to Respondent's Motion for Reconsideration;
Declaration of S.F. Ford filed: April 8, 1993
Claimant's Submission Agreement signed: January 21, 1992

Respondent Shearson Lehman Brothers, Inc.'s Response to Statement
of Claim and Request for Dismissal based upon the applicable
Statutes of Limitations filed: June 5, 1992
Supplemental Brief of Respondent Shearson Lehman Brothers, Inc. in
support of Request for Dismissal of Claims filed: November 16, 1992
Respondent Shearson Lehman Brothers, Inc.'s Reply Brief in support
of Request for Dismissal filed: January 8, 1993
Respondent's Motion for Reconsideration; Declaration of Michele R.
Fron filed: March 17, 1993
Reply Brief of Respondent in support of Motion for Reconsideration
filed: April 26, 1993
Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement
signed: July 14, 1992

HEARING INFORMATION

Pre-Hearing Conference Dates/Sessions:

January 14, 1993 (one session)
June 28, 1993 (one session)
September 17, 1993 (one session)

Hearing Dates/Sessions: September 21, 1993 (one session)
September 22, 1993 (two sessions)
September 23, 1993 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that this arbitration arises out of the mismanagement of Claimant's securities account by Respondents with respect to the purchase of a speculative and unsuitable limited partnership project entitled Shearson/Calmark Heritage Park II, LTD (Calmark) in December, 1986. Claimant further alleged violation of the Federal and State Securities Laws and Rules, violation of the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, fraud, breach of fiduciary duties, negligence under applicable state common law and failure to supervise. Claimant further alleged violation of the Securities Act of 1933, 15 U.S.C. Section 77a *et seq.*, violation of the California Corporations Code Sections 25401 and 25501, unsuitable investment advice, unreasonably based investment advice, common law and statutory fraud, breach of the covenant of good faith and fair dealing, common law and statutory negligence, negligent entrustment and negligent supervision.

Respondent Shearson Lehman Brothers, Inc. (Shearson) denied generally and specifically each and every allegation of wrongful, improper or actionable conduct alleged by Claimant and alleged that Claimant was fully advised of the details regarding the Calmark investment. Shearson further alleged that Claimant's claims are barred as a matter of law by the applicable limitations periods and asserted affirmative defenses.

RELIEF REQUESTED

Claimant asserted that because of Respondents' wrongful conduct alleged in the Statement of Claim, he sustained losses totaling not less than \$100,000.00 plus interest. Claimant requested an award rendering this recovery, plus the profits that would have been earned on the account had it been properly managed, plus interest on all compensatory damages including damages equal to all sums expended in defending the law suit filed by Fireman's against Claimant, together with an award of punitive damages, an award of attorneys' fees and the costs of arbitration, and such other relief as the arbitrators deem proper.

Shearson requested dismissal of Claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the evidentiary hearing, the arbitrators reviewed and considered the positions of counsel relative to Shearson's Motion to Dismiss. The arbitrators granted Shearson's Motion but only with respect to Claimant's claims for relief under the Federal Securities Laws. On or about June 28, 1993 the arbitrators reviewed and considered the positions of counsel relative to Shearson's Motion for Reconsideration of the panel's aforementioned ruling permitting Claimant to proceed with his claims. The arbitrators denied the Motion.

At the outset of the evidentiary hearing, Claimant's claims with respect to suitability were dismissed pursuant to stipulation by counsel during a pre-hearing telephonic conference on September 17, 1993. Counsel stipulated that Claimant would withdraw his claims with respect to suitability if Claimant could not produce certain tax returns by September 20, 1993. Said tax returns were not produced.

The parties have agreed that the Award in this matter may be executed in either 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 panel determined that Respondent Robert Pacilio was not properly served with due notice of the hearing and is therefore dismissed as a party, without prejudice.
2. All claims by Claimant, including the claim for punitive damages, are dismissed.
3. The parties shall each bear their respective costs of this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees are to be split between Claimant and Shearson

and are calculated as follows:

Three pre-hearing sessions @ \$300.00/session	=	\$ 900.00
Four hearing sessions @ \$500.00/session	=	<u>\$2,000.00</u>
Total fees assessed	=	\$2,900.00
Claimant's share (50%)	=	\$1,450.00
Credit for hearing deposit	=	\$ 800.00
Balance due	=	\$ 650.00
Shearson's share (50%)	=	\$1,450.00
Balance due	=	\$1,450.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert J. Ruben, Esq.	Public Arbitrator
John E. Cummings	Public Arbitrator
John H. Norberg, III	Industry Arbitrator

Concurring Arbitrators' Signatures

Robert J. Ruben, Esq.

John E. Cummings

John H. Norberg

John H. Norberg, III

DATE SERVED: 11/30/93

Date of Decision: Jan 23 1993