

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Dan Smargon :

Claimant :

vs. :

Shearson Lehman Brothers, Inc. :

Respondent :
-----CASE #91-04104
AWARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 30, 1991, Claimant, Dan Smargon, who appeared Pro Se, alleged that in April 1987, Respondent, Shearson Lehman Brothers, Inc. by and through their Financial Consultant, Michael Lemkin, recommended the purchase of 1,400 shares of Animed common stock for an investment for Claimant's 1987 IRA contribution by misrepresenting its future value and potential risk of loss. Claimant further alleged that since April 1987, the value of his IRA investment has continually declined and Respondent's financial consultant, Michael Lemkin's, unsuitable recommendation of a "penny stock" for an IRA investment was both inappropriate and irresponsible, therefore, Respondent is liable for this loss.

Respondent, Shearson Lehman Brothers, Inc. by and through their in-house counsel, Ann Parry, Esq., maintained that in April 1987 Claimant, Dan Smargon contacted their Financial Consultant, Michael Lemkin, to discuss alternate investment strategies for his IRA account, at which time, Claimant informed Mr. Lemkin that his investment objectives were "long term growth" and "businessman's risk-appreciation". Respondent further maintained that Mr. Lemkin suggested that Claimant invest in mutual funds or to focus on one particular stock, at which time, Mr. Lemkin mentioned several stocks at various prices, including Animed Inc. Respondent contended that Mr. Lemkin advised Claimant of the risks involved in purchasing Animed Inc. and made no guarantees regarding its performance, at which time, Claimant decided to accept those risks and adopt a more aggressive strategy with his IRA investments when he instructed Respondent to purchase 1,400 shares of Animed Inc. Respondent further contended that Mr. Lemkin later advised Claimant to sell Animed when he discovered its declining financial status, but Claimant informed Mr. Lemkin that he did not want to sell,

thus, further demonstrating Claimant's willingness to accept the risks of loss.

RELIEF REQUESTED

Claimant, Dan Smargon requested \$1,968.75 in actual damages.

Respondent, Shearson Lehman Brothers Inc. requested the claim be dismissed and they be awarded costs.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joel G. Selik, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 10, 1992 and by the Respondent on March 23, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Shearson Lehman Brothers Inc. is liable and shall pay to the Claimant, Dan Smargon the sum of \$1,926.75 in damages.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Dan Smargon shall be retained by the NASD, Inc.

AFFIRMATION

I, JOEL G. SELIK, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: June 24, 1992

ARBITRATOR'S DECISION

One must take responsibility for one's own investments. One must know, as one is best able to know, the risks associated with a type of investment. All evidence shows that Animed was a high risk investment, that is, there was a chance all money could be lost or a large gain could be made.

When advising of investments, a broker, giving advise,¹ must explain all risks associated with an investment and the investment vehicle (here, an IRA).

IRA's are for a person's retirement, and it is generally believed that in your IRA, you should have less risky investments. But a person has a right to invest in high risk, high potential for appreciation investments.² A young man such as Claimant, could desire huge growth in an IRA.

In arbitration, the burden is on the Claimant to prove his case.

In reviewing and weighing the evidence submitted, it is found that Claimant has met his burden that he should have been properly advised of the risks of such a risky investment for an IRA, and was not so advised. Respondent has not met

¹ Here the broker was an advisor not just a purchasing agent.

² And may wish to put high risk investments in an IRA, as the profits are tax deferred.

the evidence satisfactorily.³ Respondent's evidence consisted of non-attributed statements and, most importantly, no documents confirming their assertions; towit, bearing the signature of the claimant stating he understood the nature and quality of the investment as matched to an IRA. Additionally, there were no documents advising to sell.

Award to Claimant \$1,968.75 minus the last value of the stock, per the evidence submitted, \$42.00,⁴ for a total award of \$1,926.75. Each party to bear their own costs.

DATED: 5-20-92



JOE G. SELIK
NASD Arbitrator

³ Missing is any declaration of the broker or any indication of the sources of Respondent's assertions, no evidence of Pinnacle purchase, no client signature on the 1985 "Application", no asset proof of the client in 1985, no "disclosure of risks" documents and no indication of what Claimant's other investments were in.

⁴ The award may have been less for the value of the stock at the time it is alleged Claimant was advised to sell. There was no convincing evidence that he was advised to sell and no evidence, at all, what the value of the stock was at that time.