

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

W.A.W. VanLimburg Stirum

vs.

Case #
92-00099

Name of Respondents

Shearson Lehman Brothers, Inc.
Theodore Peck

REPRESENTATION

For W.A.W. VanLimburg Stirum ("Claimant"), Robert J. Lane, Jr., Esq. of Hodgson, Russ, Andrews, Woods & Goodyear.

For Shearson Lehman Brothers, Inc. ("Shearson") William Olshan, Esq., in-house counsel.

For Theodore Peck ("Peck"): Charles J. Engel, Jr., Esq.

CASE INFORMATION

Statement of Claim filed: January 7, 1992.

Claimant's Submission Agreement was signed on December 3, 1991.

Statement of Answer filed by Respondent, Shearson on: May 29, 1992.

Respondent, Shearson's, Submission Agreement was signed on May 29, 1992

Statement of Answer filed by Respondent, Peck was signed on March 19, 1992.

Respondent, Peck's, Submission Agreement was signed on March 25, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: 12/8/92 - 2 Sessions
12/9/92 - 2 Sessions
12/10/92 - 2 Sessions

Hearing Location: Omni Hotel, Albany on 12/8/92 and 12/9/92.
Desmond Americana, Town of Colonie on 12/10/92.

CASE SUMMARY

Claimant alleges that: 1) Claimant relying on Peck's recommendation invested \$230,000.00 in four units of Silver Bow Partnership; 2) That Peck breached fiduciary duty he owed Claimant and was acting as agent of Silver Bow without Claimant's knowledge; 3) That Shearson as Peck's employer failed to properly supervise Peck and Peck's wrongdoing occurred within the scope of his employment; and 4) That Claimant was damaged to the extent of \$285,000.00. Claimant also argues that Peck failed to disclose certain material facts which were material to his decision making and failed to disclose that Peck would earn \$20,000.00 in commissions on the Silver Bow investment. Claimant further alleges that Peck failed to disclose that Silver Bow was not a Shearson's product.

Peck denies all the material allegations of claim. Peck interposes a counterclaim alleging that Claimant initially brought action in Federal Court then discontinued the action against Peck in that Court and commenced this arbitration.

Shearson denies any wrongdoing on its part and any vicarious liability for any alleged wrongdoing on the part of Peck. Shearson maintains that Claimant was an experienced and knowledgeable investor who took a calculated risk in an oil and gas deal based upon his own interest and history in the oil business and his assessment of the tax advantage it would allow him in a year he planned to take one million dollar capital gain on the sale of a home in Netherlands. Shearson interposes a Crossclaim against Peck for indemnification.

RELIEF REQUESTED

Claimant requested: \$285,000.00 in damages against Peck because Claimant's interest in Silver Bow appears to be worthless and Shearson, jointly and severally.

Peck claims that he incurred legal fees and disbursements of approximately \$40,000.00 in defending the Federal Court action which should not have been brought by claimant. Shearson requests that the claim be denied and if the panels finds in favor of Claimant, that the panel rule that Peck is liable to Shearson for indemnification.

OTHER ISSUES CONSIDERED & DECIDED

After the conclusion of Claimant's case, Shearson moved for directed verdict and this panel

adjourned the hearing and asked the parties to submit post-hearing submissions by April 15, 1993. The parties requested an extension and filed submissions on June 4, 1993. By letter dated July 15, 1993, the panel requested additional information from the parties and said information was forwarded to the panel by letter dated August 3, 1993.

Claimant moved to dismiss Peck's Counterclaim for attorney's fees and expenses allegedly incurred as a result of the Federal Court lawsuit on the grounds that there is no agreement to arbitrate any claims for attorney's fees or expenses, the proper forum to do so is federal court and that the majority of attorney's fees incurred by Peck was in opposing Claimant's motion to dismiss the federal court lawsuit without prejudice.

Peck filed an Affidavit in Opposition To Claimant's Motion To Dismiss Counterclaim based upon the fact that after Claimant filed the action in District Court, Peck moved to dismiss the action on the merits for failure to state claims upon which relief could be granted and Claimant then moved to voluntarily dismiss the action without prejudice which was granted by the Court. Peck contends that it was not until Claimant filed this arbitration seven months after the dismissal alleging the same claims that Peck realized that the legal expenses incurred in defending the District Court action was wasted.

In its post-hearing submission Shearson argues that it is not liable to Claimant for losses sustained in the Silver Bow Partnership. Shearson alleges that Peck was expressly prohibited from introducing or selling partnerships to Claimant by New York Stock Exchange Rule and Shearson's internal policy. Shearson also argues that Claimant failed to establish a prima facie case of secondary liability against Shearson under New York Law.

In his Memorandum of Law In Opposition to Shearson's Motion For Directed Verdict, Claimant among other things argues that such a motion should be granted only if, after giving Claimant every favorable inference, the trier of facts could not find for Claimant based upon the evidence presented. Claimant states that the motion for directed is premature and is not provided for in the Code of Arbitration Procedure. Claimant also states that the evidence adduced from the hearing thus far demonstrates that Claimant had no reason to think that this was not a Shearson product.

The decision of the panel is contained in the Award section.

AWARD

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

The purchase of the partnership units in Silver Bow was the sole decision of the Claimant without any representations by Peck that they were a safe and prudent investment. On the contrary, the purchase of any interests in oil property was risky. That in making the purchases Claimant did not rely on Peck or Shearson, and Shearson was not at fault. The claim of Mr. Van Stirum against both Mr. Peck and Shearson is therefore denied. The counterclaim of Mr. Peck is also found to be without merit and hence denied. Shearson's claim for indemnification is therefore denied.

FORUM FEES

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

It is the decision of the Panel that the forum fees be paid equally by the three parties to the proceeding; hence, each should pay one third.

Non-refundable Filing Fee - \$200.00

Non-refundable Cross Claim Filing Fee - \$500.00

Non-refundable Counter Claim Filing Fee - \$500.00

Hearing Session Fees (\$750 per session x 6 sessions) - \$4,500.00

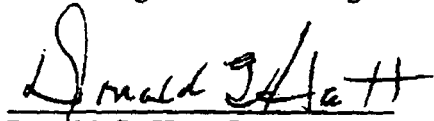
1. Claimant is assessed \$1,900.00. Claimant previously paid \$950.00 and therefore owes a balance of \$950.00.
2. Shearson is assessed \$1,900.00. Shearson previously paid \$1,250.00 and owes a balance of \$650.00.
3. Peck is assessed \$1,900.00. Peck previously paid \$1,700.00. Peck requested and this panel granted postponement of the hearings scheduled for September 23 and 24, 1992. This panel waived the postponement fee pursuant to Section 30 of the Code. Peck, therefore, owes a balance of \$200.00.

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

ARBITRATION PANEL

Donald G. Hatt, Esq.	-	Public Chairperson
Lorraine I. Remo, Esq.	-	Public Panelist
James J. Carroll	-	Industry Panelist

Concurring Arbitrator's Signature

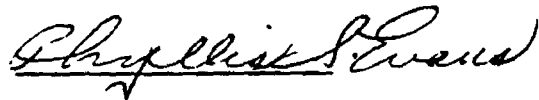

Donald G. Hatt, Esq.

Date of Decision October 21, 1993

STATE OF NEW YORK
COUNTY OF ^{re}

S.S.:

On this ⁴ day of October, 1993, before me personally appeared *Donald G. Hatt, Esq.* who executed the foregoing instrument and duly acknowledged to me that he executed the same.



PHYLLIS S. EVANS
Notary Public, State of New York
Qualified in Albany County
Commission Expires July 31, 1995

Concurring Arbitrator's Signature

Lorraine I. Remo
Lorraine I. Remo, Esq.

Date of Decision: October 21, 1993

STATE OF NEW YORK
COUNTY OF SCHENECTADY

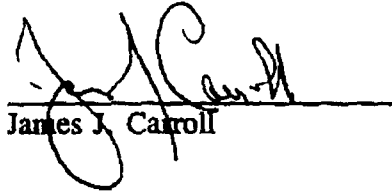
S.S.:

On this 5th day of October, 1993, before me personally appeared *Lorraine I. Remo, Esq.* who executed the foregoing instrument and duly acknowledged to me that he executed the same.

Emilie Evans

EMILIE EVANS
Notary Public, State of New York
No. 4883911
Qualified in Albany County
Commission Expires 3/28/95

Concurring Arbitrator's Signature


James J. Carroll

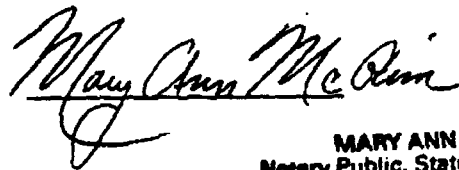
Date of Decision: October 21, 1993

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STATE OF NEW YORK
COUNTY OF ALBANY

S.S.:

On this 4th day of October, 1993, before me personally appeared *James J. Carroll* who executed the foregoing instrument and duly acknowledged to me that he executed the same.



MARY ANN COBY *McQuinn*
Notary Public, State of New York
No. 4818361
Qualified in Albany County
- Commission Expires March 30 1994
McQuinn