

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

John E. Schroeder  
Florence J. Schroeder

No. 92-00131

Name of Respondent

Shearson Lehman Brothers, Inc.

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REPRESENTATION OF PARTIES

For Claimants: Rex J. Ridenour, Esq. of Dricks, Ridenour, Norman and Macek, Davenport, Iowa.

For Respondent: William A. Hohausser, Esq. of Shearson Lehman Brothers, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: January 3, 1992.

Claimant's Submission Agreement signed on: January 8, 1992.

Statement of Answer filed by Respondent, Shearson Lehman Brothers, Inc. on: May 4, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: April 30, 1992.

HEARING INFORMATION

Hearing date: June 16, 1992. One (1) Session.

Hearing Location: Chicago, Illinois.

## CASE SUMMARY

Claimant, John E. Schroeder and Florence J. Schroeder, ("Claimants") alleged unsuitability, and misrepresentations and omissions by Respondent Shearson Lehman Brothers, Inc. ("SLB") through a broker employed at SLB by the name of James Victor ("Victor"). Victor was not a named party to this arbitration. The allegations arose from an investment in Portfolio High Income Bond Fund ("Fund"), a mutual fund consisting of corporate bonds, made in December of 1987.

Claimants alleged never having had any experience in investing or trading in securities and Victor knew this fact. Claimants further alleged that their goals were to receive a regular monthly income without invading the principal, and they did not want an investment like the stock market. Victor advised investing in the fund, and Claimants alleged that it was unsuitable, and that they were unaware that there would be any fluctuation in the value of the investment. Claimants asserted that the nature of the investment was not adequately explained or the risk disclosed to them at the time of their investment, and that Victor failed to help them adequately informed as to the performance of the investment. Lastly, Claimants alleged having made their investment in reliance on the statements made by Victor, and that Claimants would not have invested if the nature of the investment had been disclosed and explained to them.

In its Statement of Answer, SLB denied each and every material allegation contained in the Statement of Claim. In addition SLB alleged that any losses sustained by Claimants in association with their investment in the fund, and were a direct result of Claimants' voluntary actions, and that Claimants were at all times aware of their risks involved in their investment. SLB further alleged that any damages sustained by Claimants were not a result of the performance of the investment, but were alleged to be a direct result of Claimants' abuse of the liquidity of the Fund through their continued redemptions. Lastly, it was alleged that had Claimants not consistently dissipated their Fund shares, not only would the Fund have performed as represented by Victor, but would have outperformed any expectations that Victor related to Claimants.

### RELIEF REQUESTED

Claimants requested an award of \$5,864.69, with interest, costs, and attorney's fees.

Respondent requested that the Statement of Claim be dismissed in its entirety, and that Respondent be awarded costs, including attorneys' fees.

### OTHER ISSUES CONSIDERED & DECIDED

Respondent had initially requested that this hearing be allowed to proceed telephonically, and Claimants joined in the request. Upon receiving Claimant's confirmation on May 15, 1992, the issue was presented to the undersigned arbitrator. After consideration of the request, the hearing was allowed to proceed telephonically.

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 original remains on file with the NASD.

### AWARD

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

1. Claimants, John E. Schroeder and Florence J. Schroeder's claims against Respondent Shearson Lehman Brothers, Inc. are hereby denied and dismissed with prejudice.
2. Each party shall bear their own costs, including attorneys' fees, of this arbitration.

### FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions X \$ 200.00 = \$ 400.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$75.00, and shall retain the hearing session deposit in the amount of \$200.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$200.00 are assessed against Respondent Shearson Lehman Brothers, Inc.

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

Dated:

June 16, 1992

/s/Jacques E. Heilingoetter, Jr.  
Jacques E. Heilingoetter, Jr.  
Presiding Chair  
Public Arbitrator