

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David Hodgdon, as trustee of the Sam D. Hodgdon
Trust, u/a/d January 4, 1988

92-00147

Name of Respondents

Shearson Lehman Hutton, Inc., n/k/a Smith Barney
Shearson, Inc.;
Lester Larry Sockey

REPRESENTATION

For Claimant: David Hodgdon, as trustee of the Sam D. Hodgdon Trust, u/a/d January 4, 1988, ("Hodgdon") was represented by David P. Oetting, Esq. of Curtis, Oetting, Heinz, Garrett & Soule, P.C., located in Clayton, Missouri.

For Respondents: Shearson Lehman Hutton, Inc., now known as Smith Barney Shearson, Inc., ("Shearson") was represented by Thomas M. Newmark, Esq. and Stirling L. Miller, Esq. of Gallop, Johnson & Neuman, located in St. Louis, Missouri.

Lester Larry Sockey ("Sockey") appeared pro se.

CASE INFORMATION

Statement of Claim filed: January 14, 1992.

Claimant's Submission Agreement signed on: February 4, 1992.

Statement of Answer filed by Respondent Shearson on: June 8, 1992.

Respondent Shearson's Submission Agreement signed on: April 9, 1992 by James S. Goddard,
Vice President and Associate General Counsel, Shearson Lehman Brothers, Inc.

Statement of Answer filed by Respondent Sockey on: May 14, 1992.

Respondent Sockey's Submission Agreement signed on: June 18, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: February 15, 1994 for Two (2) hearing sessions;
February 16, 1994 for Two (2) hearing sessions; and
February 17, 1994 for Three (3) hearing sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimant Hodgdon alleged that Respondent Sockey, while employed by or acting as an agent for Drexel Burham Lambert Incorporated ("Drexel") and Respondent Shearson, made and recommended securities sales and purchases inconsistent with Sam D. Hodgdon's investment objectives; "churned" the account to generate tremendous amounts of commission dollars; and engaged in unauthorized trading even though no discretion had been granted over the accounts to the Respondents. Based upon the above allegations, the Claimant asserted claims for violation of the Missouri Uniform Securities Act, §409.101 and 409.411; breach of fiduciary duty; negligence; unsuitability; and "churning."

Respondent Shearson denied the material allegations of the Statement of Claim alleging that:

1. Sam D. Hodgdon was a sophisticated investor who enjoyed playing the stock market, who had a substantial income and net worth. At the time the trust account was formed, Hodgdon rarely used the funds in the account for personal or family purposes, instead allowing the dividends and other earnings to roll over for reinvestment;
2. After the 1987 market "crash", Hodgdon asked Sockey (who was then with Drexel) to meet with him and discuss Hodgdon's investments, investment strategy and investment objectives. Hodgdon believed there was opportunities for those with "cash" due to the low prices resulting from the crash and he began moving more of his investments into stocks;
3. Hodgdon requested and Sockey provided detailed analyses of different stocks, stock recommendations and recommendations of the research department of Drexel. All transactions were discussed in advance and approved by Hodgdon. He received all confirmations and monthly statements;
4. In 1989, Hodgdon undertook a more aggressive investment strategy. His

strategy continued when he opened his Shearson account in June of 1989, including an interest in companies that were the possible subjects of takeover bids and had the possibility of substantial appreciation; and

5. Hodgdon, on a number of occasions, confirmed with the Shearson branch manager that Sockey was following Hodgdon's instructions and that Hodgdon was fully aware of the trading activity and risks.

Shearson asserted several affirmative defenses, including the following:

1. The claims are barred by the applicable statute of limitations and the doctrines of waiver and estoppel;
2. Claimant ratified all trades it contends were unauthorized or unsuitable and is barred from now challenging the transactions;
3. Claimant has failed to state a claim upon which relief can be granted; and
4. Punitive damages are not permitted under New York law, which governs this proceeding.

Respondent Sockey denied the material allegations of the Statement of Claim, asserting that:

1. This matter was given an in-house investigation by Shearson Lehman Hutton, Inc. in 1990 and the NYSE in 1991. Neither resulted in any type of discipline;
2. Sam D. Hodgdon was extremely sharp and of sound mind, had a stubborn streak, and would not do anything he did not want to do;
3. Hodgdon met with two senior brokers and a manager at Drexel before he began doing business with Sockey;
4. All trades were done with Sam Hodgdon's knowledge and authority. He received all confirmations and monthly statements. Regular portfolio reviews were done and reviewed in person. Hodgdon was furnished regularly with research reports, and Standard and Poor's and Value Line summaries. Drexel regularly sent account "activity letters" in the months he was actively trading; and
5. Hodgdon was of substantial means and rarely took money out of the accounts he had with Sockey. He never voiced a complaint about the service provided to him.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for actual damages in the sum of \$375,802.00; punitive damages in the amount of \$1,000,000.00; interest and cost; and attorneys' fees.

Respondent Shearson requested that the arbitration panel dismiss Count I of Claimant's claim for failure to allege with requisite specificity the alleged fraudulent conduct; strike the request for punitive damages which are not available under New York law; and find in favor of Respondent Shearson and against Claimant on all matters.

Respondent Sockey requested that the claim be found to be totally without merit.

OTHER ISSUES CONSIDERED & DECIDED

Drexel Burnham Lambert Incorporated was originally named as a Respondent, but filed bankruptcy. All matters against Drexel were stayed pursuant to the United States Bankruptcy Code.

Respondents filed Motions to Dismiss this arbitration. The Motions and the Responses were forwarded to the Panel for decision. Upon review, the Panel determined that the Motion would be taken with the case and determined upon presentation of the evidence. The Panel hereby denies the Motions to Dismiss.

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.

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. Respondent Shearson Lehman Hutton, Inc., now known as Smith Barney Shearson, Inc., and Lester Larry Sockey are jointly and severally liable for and shall pay to Claimant David Hodgdon, as trustee of the Sam D. Hodgdon Trust, u/a/d January 4, 1988, the sum of \$112,000.00;
2. The Respondents' Motions to Dismiss are hereby denied;

3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;

4. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Seven (7) hearing sessions x \$1,000.00 per session = \$7,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and refund the \$1,000.00 hearing sessions deposit previously deposited by the Claimant. Respondents Shearson Lehman Hutton, Inc., now known as Smith Barney Shearson, Inc., and Lester Larry Sockey are jointly and severally liable for and shall pay to the NASD the sum of \$7,000.00 as forum fees.

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

Concurring Arbitrators' Signatures
Name

Date

/s/ Charles E. Jones, Esq.
Charles E. Jones, Esq.
Public Arbitrator
Chairperson

May 25, 1994

/s/ Michael L. Lyons
Michael L. Lyons
Public Arbitrator

May 24, 1994

/s/ Dale W. Roth
Dale W. Roth
Industry Arbitrator

May 24, 1994

For NASD Use Only

Date of Decision: 5-31-94