

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant/Counterrespondent

Albert J. Van Maren

No. 92-00336

Name of Respondent/Counterclaimant

Shearson Lehman Brothers, Inc.
David Asplund

REPRESENTATION OF PARTIES

For Claimant: Richard J. Nogal, Esq. of Lillig & Thorsness, Ltd., Oak Brook, Illinois

For Respondents: Bradley C. Twedt, Esq. of Neal Gerber & Eisenberg, Chicago, Illinois

CASE INFORMATION

Statement of Claim filed: January 24, 1992.

Claimant's Submission Agreement signed on: January 22, 1992.

Joint Statement of Answer and Counterclaim filed by Respondents, Shearson Lehman Brothers, Inc. & David Asplund on: April 20, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: March 25, 1992.

Respondent David Asplund's Submission agreement signed on or about March 25, 1992.

Claimant's letter indicating that the Statement of Claim will stand as Answer for Reply to Respondents Counterclaim filed: June 19, 1992.

Motion to Amend and Amended Statement of Claim filed: November 20, 1992.

Response to Motion to Amend Statement of Claim filed: November 30, 1992.

HEARING INFORMATION

Hearing dates: December 1, 1992. One (1) session.
December 2, 1992. Two (2) sessions.

Hearing Location: Chicago, Illinois

CASE SUMMARY

Claimant Albert J. Van Maren ("Claimant") alleged that the trading conducted by the Respondents Shearson Lehman Brothers, Inc. and David Asplund ("Respondents") had been inappropriate for a man with Claimant's background, net worth, liquid assets, and who had been financing his investments from a home equity line of credit. Claimant also alleged that Respondents' liability arose from the following:

1. Respondents' breach of contract, due to the Respondents' failure to provide competent, professional investment services to the Claimant;
2. Respondents' negligence in recommending an undiversified, high risk leveraged investment strategy for Claimant's home equity loan proceeds;
3. Respondents' breaches of fiduciary duty owed to Claimant as his "Financial Consultants";
4. Respondents' recommendation of unsuitable investments for Claimant, as well as unsuitable trading activity and margin trading; and
5. Respondents' failure to advise and explain fully to Claimant the consequences of margin trading.

The allegations found in the Statement of Claim arose out of transactions, in the following stocks: Texaco; USX; Talman Home; Racal Elect; Smith Corona; Paramount Comm.; AM Trust J&J SHS; Marriott; Businessland; AM Express Val; Sun Electric; AM Trust GTE Chars; and VAL calls.

In their joint Answer to the Statement of Claim, Respondents denied any liability to Claimant for his trading losses and denied each and every allegation contained in the Statement of Claim which was inconsistent with their Answer. Respondents also asserted the Claimant was not a risk-adverse investor, and that Claimant had been looking to Respondents for recommendations of riskier securities with the potential for Capital appreciation. Respondents

further asserted that Claimant's trading objections were not low-risk and conservative. Respondents went on to assert that they had properly discharged their duties to Claimant.

For its Counterclaim against Claimant, Respondent Shearson Lehman Brothers, Inc. ("SLB") alleged that Claimant's trading had left Claimant's account with a negative balance of \$3,035.22. SLB alleged that paragraph 18 of the Client Agreement, the above referenced amount was payable on demand. SLB further alleged that despite demands for payment, Claimant had not made any payments to lower the debit balance.

RELIEF REQUESTED

Claimant requested an award in the principal amount of \$146,774.50, together with appropriate interest or appreciation on the principal amount.

Respondents requested an award finding that Respondents were not liable to Claimant, and also requested that they be permitted to recover from Claimant all of the costs and fees expended in connection with this proceeding. Respondent Shearson Lehman Brothers, Inc., in its Counterclaim, requested an award against Claimant in the amount of \$3,035.22, plus interest thereon from September 1, 1990 through collection.

OTHER ISSUES CONSIDERED & DECIDED

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. Claimant failed to prove any charges against Respondent Asplund, therefore, Claimant's claims relating to Asplund are denied and dismissed with prejudice.

2. Claimant failed to prove any charges against Respondent Shearson, except that Shearson's charges of commission after margin calls on August 2, 1990, were not earned in an amount of \$3,129.29. However, this amount was offset by Shearson in the sum of \$3,035.22. Therefore, Respondent Shearson Lehman Brothers, Inc. is liable for, and shall pay to Claimant Albert J. Van Maren the sum of \$94.07 as satisfaction of his claims.

3. Each party shall pay its own costs of this arbitration, except as set forth more fully below.

FORUM FEES

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

3 hearing sessions X \$750.00 = \$2,250.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable counterclaim filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by Respondent Shearson Lehman Brothers, Inc.

Additional forum fees in the amount of \$375.00 are assessed against Claimant.

Additional forum fees in the amount of \$825.00 are assessed against Respondent Shearson Lehman Brothers, Inc.

Award 92-00336

Page 5 of 5

The NASD shall retain the postponement fee in the amount of \$750.00 previously deposited with the NASD by Respondent Shearson Lehman Brothers, Inc.

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

Concurring Arbitrators' Signatures

Dated:

January 8, 1993

/s/Charles A. Brizzolara
Charles A. Brizzolara
Presiding Chair
Public Arbitrator

January 6, 1993

/s/Thomas E. Burke
Thomas E. Burke
Industry Arbitrator

January 7, 1992

/s/Lawrence W. Gougler
Lawrence W. Gougler
Public Arbitrator

Date of service by the NASD: 1-14-93