

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants/Counter-Respondents

Barbara Anzilotti;
A & A Court Reporters, Inc.

92-00517

Name of Respondents/Counter-Claimants

Shearson Lehman Brothers, Inc.;
Esther Villarreal Houser

REPRESENTATION

For Claimants/Counter-Respondents: Barbara Anzilotti and A & A Court Reporters, Inc. were represented by James R. Leahy, Esq. and Thomas G. Tucker, Esq. of Baker, Brown, Sharman & Parker, L.L.P., located in Houston, Texas.

For Respondents/Counter-Claimants: Shearson Lehman Brothers, Inc. and Esther Villarreal Houser were represented by Pete S. Michaels, Esq. of Shearson Lehman Brothers, Inc., New York, New York and Jack D. Ballard, Esq. of Hutcheson & Grundy, L.L.P., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: February 11, 1992.

Claimant/Counter-Respondent Barbara Anzilotti's Submission Agreement signed on: January 13, 1992.

Claimant/Counter-Respondent A & A Court Reporters, Inc.'s Submission Agreement signed on: January 13, 1992 by Barbara Anzilotti, President, A & A Court Reporters, Inc.

Joint Statement of Answer and Counterclaim filed by Respondents/Counter-Claimants Shearson Lehman Brothers, Inc. and Esther Villarreal Houser on: April 15, 1992.

Respondent/Counter-Claimant Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: April 29, 1992 by Pete S. Michaels, Vice President and Associate General Counsel, Shearson Lehman Brothers, Inc.

Respondent/Counter-Claimant Esther Villarreal Houser's Submission Agreement signed on: March 6, 1992.

Claimants/Counter-Respondents' Reply to the Counterclaim filed on: June 12, 1992.

HEARING INFORMATION

Pre-Hearing Conference: April 15, 1993 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: April 21, 1993 for Two (2) sessions;
April 22, 1993 for Two (2) sessions;
April 23, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants/Counter-Respondents Barbara Anzilotti ("Anzilotti") and A & A Court Reporters, Inc. ("A & A"), together referred to as "Claimants", alleged that Respondent/Counter-Claimant Esther Villarreal Houser ("Houser"), while employed by or acting as an agent for Respondent/Counter-Claimant Shearson Lehman Brothers, Inc. ("Shearson"), misrepresented or concealed material facts concerning the character of certain stocks, placing Claimants in investments which were unsuitable given Claimants investment objectives. The Claimants specifically alleged that:

1. In approximately April of 1986, Houser contacted Anzilotti and inquired whether she was interested in doing additional investing with Shearson. Anzilotti told Houser that; 1) she was fearful because she had no knowledge or experience in stock market investments and 2) she was not financially dependent on another person, and therefore she needed to invest in safe, low risk, moderate growth securities to avoid major losses;
2. Houser assured Anzilotti that she would provide investment advice consistent with her investment needs and would not deviate from these investment goals. Based upon these representations, Houser became Anzilotti's account representative;
3. In the fall of 1988, Anzilotti met with an authorized agent of Shearson about formulating a written "Financial and Estate Plan" which would analyze Anzilotti's current and future financial needs, and would memorialize and verify her original investment goals. Anzilotti purchased the plan which was presented to her in May 1989. The plan set forth her investment goals, including that her primary objectives were to be met by employing those techniques which were "consistent with an overall need for a degree of safety";

4. Respondents/Counter-Claimants failed to meet Anzilotti's investment goals before and after the development of the plan, investing her funds in speculative, high-risk, and infrequently traded stocks. The stocks were represented to be low-risk, conservative investments, but were instead poorly performing, infrequently traded stocks. Shearson acted as a market maker for many of the stocks and concealed this fact from Anzilotti:

5. In other situations, Houser's advice was driven by the Respondents/Counter-Claimants' close personal relationships with key corporate personnel of the traded companies. In addition, Houser repeatedly misrepresented or concealed material facts concerning the character and financial condition of the stocks. In late 1989, Anzilotti wanted to cut her losses by selling the stock in the portfolio, but was assured by Houser and her branch manager that the value would soon increase. Anzilotti relied on their professional judgment and did not sell;

6. The stock continued to drop and in 1990, Claimants terminated their accounts and withdrew the remaining sums.

Based upon the above allegations, Claimants/Counter-Respondents asserted claims for violation of federal and state securities laws; breach of fiduciary duty; violation of the duty of good faith and fair dealing; breach of contract and violation of industry rules and standards; fraud and misrepresentation; and violation of the Texas Deceptive Trade Practices Act.

Respondents/Counter-Claimants Shearson and Houser denied the material allegations of the Statement of Claim, alleging that:

1. Only a portion of Anzilotti's sizeable portfolio was invested in the stock market. The portfolio was not comprised of only speculative stocks, but was diverse, also having positions in money markets, CDs, mutual funds, bond funds and annuities;

2. None of the accounts were discretionary, and Houser thoroughly discussed each of the investments, including the risks, and obtained approval from Anzilotti before the investments were made. Anzilotti was knowledgeable regarding her investments and made the decisions regarding the investments in her account;

3. While the Financial and Estate Plan contained the referenced statements, it also contained language that the suggestions were solely for review and implementation by Anzilotti and her professional counsel, and that there can be no substitute for the judgment and skills of her advisors. In addition, Anzilotti decided not to follow the recommendations in the plan regarding managed equity accounts;

4. Shearson's status as a market maker was disclosed on each transactional confirmation and the allegation that Houser's advice was driven by her personal relationships within the companies is without foundation. The sound investment recommendations were based upon information available to Respondents/Counter-Claimants at the time and were made in the best interest of Anzilotti;

5. Anzilotti omits any description of the successful investments made through Houser and seeks to hold Shearson liable for losses in selected stocks, while keeping the profits from her successful investments.

In addition, Respondents/Counter-Claimants asserted the following affirmative defenses:

1. Anzilotti's Statement of Claim fails to state a claim upon which relief can be granted;
2. Anzilotti's claims are barred by the legal principles of waiver and estoppel and by the terms of the Shearson Client Agreement she executed;
3. Anzilotti's claims are barred in whole or in part by the doctrines of ratification and affirmance, her failure to mitigate damages and by the doctrine of laches and applicable statute of limitations;
4. Respondents acted in compliance with all applicable rules and regulations, in good faith, and did not induce any acts which were alleged to constitute wrongful conduct. Any damages were the result of Anzilotti's contributory negligence;
5. Neither Shearson or Houser are liable for any losses in Anzilotti's account because she was solely in control and the Respondents did not exercise discretion or de facto control over the accounts;
6. The claims are barred as a matter of law because Anzilotti knowingly accepted the risks of her investments after being fully advised of their characteristics.

In addition, Respondents Shearson and Houser filed a Counterclaim, alleging that Claimants intentionally and willfully attempted to mislead the Arbitrators by including factual inaccuracies, misrepresentations and omissions in the Claim, and that therefore, the Claimants were liable for bringing a claim pursuant to the Texas Deceptive Trade Practices Act in bad faith and for malicious prosecution and abuse of process.

Claimants Anzilotti and A & A Court Reporting, Inc. denied the allegations of the Counterclaim.

RELIEF REQUESTED

Claimants/Counter-Respondents Anzilotti and A & A Court Reporting, Inc. requested an award of actual damages in an amount not less than \$195,887.00; punitive damages of not less than \$250,000.00; double or treble damages pursuant to the Texas Deceptive Trade Practices Act; and attorneys' fees, interest, and all costs of arbitration. In addition, Claimants/Counter-Respondents requested that the Counterclaim be dismissed in its entirety, that Claimants/Counter-Respondents be awarded all costs and attorneys' fees incurred in defending the counterclaim and for such other relief as the panel deemed just.

Respondents/Counter-Claimants Shearson and Houser requested that Claimants' Statement of Claim be dismissed in its entirety and that Respondents be awarded all costs and attorneys' fees that were incurred; alternatively, that Respondents be awarded all costs, expenses and attorneys' fees and expenses on the Counterclaim; and for such other relief as the Panel deemed fit.

OTHER ISSUES CONSIDERED & DECIDED

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. Respondents Shearson Lehman Brothers, Inc. and Esther Villarreal Houser are jointly and severally liable for and shall pay to Claimants Barbara Anzilotti and A & A Court Reporting, Inc. the sum of \$224,680.00;
2. The claims for damages pursuant to the Texas Deceptive Trade Practices Act and for punitive damages are hereby dismissed and denied in their entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

OTHER COSTS

The NASD shall retain the \$750.00 adjournment fee previously deposited by the Claimants, Barbara Anzilotti and A & A Court Reporting, Inc.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing session with One (1) arbitrator x \$300.00 per session = \$300.00; Six (6) Hearing sessions x \$750.00 per session = \$4,500.00; Total Forum Fees = \$4,800.00.

The National Association of Securities Dealers, Inc. ("NASD") shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants, Barbara Anzilotti and A & A Court Reporting, Inc. In addition, the NASD shall retain the \$250.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Respondents, Shearson Lehman Brothers, Inc. and Esther Villarreal Houser. Respondents Shearson Lehman Brothers, Inc. and Esther Villarreal Houser are jointly and severally liable for and shall pay to the NASD the sum of \$3,450.00 as additional forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

Douglas F. Pierce, Esq.
Douglas F. Pierce, Esq.
Public Arbitrator
Chairperson

July 6, 1993

Frank M. Romano
Frank M. Romano
Public Arbitrator

July 3, 1993

Ronald M. Roberts
Ronald M. Roberts, Phd.
Industry Arbitrator

July 5, 1993

For NASD Use Only

Date of Service of Award:

7-14-93