

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Ezra Johnson

92-00545

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
The Robinson Humphrey Company, Inc.
William L. Effinger, III
Oscar Ayala

REPRESENTATION

For Claimant Ezra Johnson: Raymond Moss, Esq. and Gregory J. Digel, Esq. of the law firm of Branch, Pike, Ganz & O'Callaghan.

Respondent Oscar Ayala did not appear.

All other Respondents were represented by Peter J. Anderson, Esq. of the law firm of Sutherland, Asbill & Brennan.

CASE INFORMATION

On January 23, 1992, Ezra Johnson executed a Uniform Submission Agreement.

On April 1, 1992, William L. Effinger, III executed a Uniform Submission Agreement.

On March 10, 1992, Shearson Lehman Brothers, Inc. and The Robinson-Humphrey Company, Inc. executed a Uniform Submission Agreement.

The Respondent Oscar Ayala did not sign a Submission Agreement or file an Answer as required pursuant to Section 25 of the Code of Arbitration Procedure.

On February 7, 1992 Claimant submitted a Statement of Claim.

On April 1, 1992, all respondents except Oscar Ayala submitted a Statement of Answer.

Oscar Ayala filed no response with the panel, although he was reportedly served with the Statement of Claim and notice of hearing at his current abode in the Federal Prison Camp in Maxwell Air Force Base in Alabama.

HEARING INFORMATION

Pre-hearing Conference: March 22, 1993 (panel)
 March 23, 1993 (panel)

Hearing Dates/Sessions: March 31, 1993 / Two Sessions
 April 1, 1993 / Two Sessions
 April 23, 1993 / Two Sessions

Hearing Location: The hearings were held at the NASD office at 3490 Piedmont Road, N.E., Suite 500, One Securities Centre, Atlanta, GA 30305 on March 31 and April 1, 1993. The final day of hearing, April 23, 1993, took place at the American Arbitration Association Office at 1795 Century Boulevard, Atlanta, DeKalb County, Georgia.

CASE SUMMARY

Claimant alleged this case involves a massive and extraordinary three-year active pattern of grand larceny, securities fraud and violations, embezzlement and other fraudulent and deceitful practices involving hundreds of transactions by a vice-president and registered representative of The Robinson-Humphrey Company, Inc. ("Robinson-Humphrey"), a wholly-owned subsidiary of Shearson Lehman Brothers, Inc. ("Shearson Lehman Brothers") (Robinson-Humphrey & Shearson Lehman Brothers will hereinafter be referred to as "Shearson Lehman Brothers/Robinson").

Claimant further alleged among the claims involved here is the outright theft of at least \$2.4 million by a broker "Oscar Ayala", at Shearson Lehman Brothers/Robinson from a group of over thirty different investors from and through their accounts at Shearson Lehman Brothers/Robinson, including twenty former and current professional athletes and Claimant and these other defrauded investors were induced through false representations and outright lies to place their full confidence and all of their money with the Atlanta, Georgia office of Robinson-Humphrey.

Claimant further alleged while employed at Robinson/Humphrey's Buckhead office, Oscar Ayala ("Ayala") engaged in his campaign of fraud and theft under the direct supervision of branch manager William L. Effinger, III ("Effinger") and other employees of Robinson-Humphrey and Effinger and Shearson Lehman Brothers/Robinson failed to carry out their supervisory responsibilities with respect to Ayala and claimed to have failed to detect even one instance of

improper conduct on the part of Ayala until his fraud and theft had been going on for at least 36 months and the failure of Effinger, Shearson Lehman Brothers/Robinson and other compliance employees to properly supervise Ayala permitted him to continue his recurrent malfeasance and rendered them liable for Ayala's conduct. Claimant further alleged Respondents breached the fiduciary duty owed to Claimant; churned his account; invested his funds in unsuitable investments and trading and engaged in unauthorized trading and margin overleveraging.

Respondents Shearson Lehman Brothers, Robinson-Humphrey and William Effinger, III maintained they are not liable for Ayala's alleged actions as vicarious liability does not attach and they are not vicariously liable under the common law; they are not primarily liable because they were justified in employing Ayala and they did not violate any regulatory rules. Respondents Shearson Lehman Brothers, Robinson-Humphrey and William Effinger further maintained given Claimant's situation, including his high income, competitive attitude and stated investment objectives Respondents were convinced that the investments Claimant made were suitable for his investment goals and that Claimant understood the nature of the investments; they did not breach the fiduciary duty owed to Claimant; they were not negligent; Claimant ratified the pattern of Ayala's trading; Claimant's account was not churned; Claimant's failure to examine his account statements even when these statements contained his checking account information established an incredible degree of participation in his alleged losses and Claimant's claims are barred by the defenses of estoppel, waiver and ratification. Respondents Shearson Lehman Brothers, Inc. Robinson-Humphrey and William Effinger, III, further maintained that neither punitive, exemplary or attorneys' fees are deserved as Claimant has not shown that they acted with a willful or wanton disregard for his rights. Respondents Shearson Lehman Brothers, Inc., Robinson-Humphrey and William Effinger, III further maintained restitution has been made to Claimant.

RELIEF REQUESTED

During the hearing Claimant requested to be made whole and stated the actions of the Respondents cost Claimant between \$30,000.00 and \$80,000.00 in lost income and/or profits and/or rental value of the converted funds.

Claimant further requested punitive damages, attorneys' fees and costs of filing the arbitration and for the use of expert witnesses and other relief that the panel deems just and proper.

Respondents, except Ayala, requested dismissal of the claim assessing costs against the Claimant.

AWARD

After considering the pleadings, the testimony and the evidence and arguments of the parties and counsel presented during the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. In accordance with Section 25 of the Code of Arbitration Procedure, the Respondent Oscar Ayala was served with the Statement of Claim and given an opportunity to respond which he failed to do;
2. In accordance with Section 21 and Section 26 of the Code of Arbitration Procedure, the Respondent Oscar Ayala was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;
3. In accordance with Section 29 of the Code of Arbitration Procedure, the arbitration panel determined in light of the foregoing information to proceed with the Respondent Oscar Ayala as a party.
4. Respondents Shearson Lehman Brothers, Inc., The Robinson-Humphrey Company, Inc. and Oscar Ayala be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$25,000.00 interest specifically excluded.
5. All claims against Respondent William Effinger, III be and hereby are dismissed in all respects.
6. The Respondent Oscar Ayala be and hereby is liable and shall pay to the Claimant the sum of \$150,000.00 representing punitive damages pursuant to Georgia statutes and case law cited by the Claimant in his Statement of Claim.
7. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

8 sessions x \$750.00 = \$6,000.00 less Claimant's hearing session deposit
(\$750.00) = net \$5,250.00 due.


The Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,625.00 to represent forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$2,625.00 to represent forum fees.

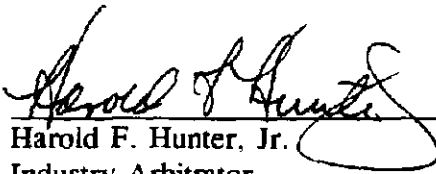
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS' SIGNATURE


Chandler Bridges, Esq.
Public Arbitrator


Martin H. Peabody, Esq.
Public Arbitrator


Harold F. Hunter, Jr.
Industry Arbitrator

Decision Dated: June 2, 1993