

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Derrick A. Stoutamire

92-00577

Name of Respondents

Shearson Lehman Brothers, Inc.  
Neil Kirk

REPRESENTATION

For Claimant Derrick A. Stoutamire ("Claimant"): Amy R. Goldson, Attorney at Law

For Respondent Shearson Lehman Brothers, Inc. ("Shearson") and Neil Kirk ("Kirk"): Charles R. Mills and Linda M. Gardner of the law firm of Lord Day & Lord, Barrett Smith

CASE INFORMATION

Statement of Claim filed: February 14, 1992

Claimant's Submission Agreement signed on: January 3, 1992

Joint Statement of Answer filed by Respondents Shearson and Kirk (collectively referred to as "Respondents") on: April 21, 1992

Shearson's Submission Agreement signed on: March 19, 1992

Kirk's Submission Agreement signed on: July 23, 1992

HEARING INFORMATION

Hearing Dates/Sessions: October 15, 1992 - two sessions, October 16, 1992 - one session

Hearing Location: NASD Office, Washington, D.C.

CASE SUMMARY

Claimant alleged that he had received a lump sum award for damages sustained in an accident and that Respondents were directed to place Claimant monies in

a stable or income producing investment. Claimant alleged that Respondents were advised of Claimant's investment objective and that Respondents placed Claimants lump sum distribution in GNMA Unit Trust. Claimant alleged that Respondents were expressly instructed not to trade in stocks in Claimant's account. Claimant alleged that he was an unsophisticated investor. Claimant alleged that Respondents disregarded his stated investment objective and disobeyed Claimant's stated investment objectives. Claimant alleged that Kirk made unauthorized trades in Claimant's account. Claimant alleged that Respondents induced Claimant to liquidate the GNMA Unit Trust and trade in the stock market. Claimant alleged that Respondents induced Claimant to use an American Express credit card and to rely completely on Kirk's investment judgement. Claimant alleged that Kirk, not Claimant, controlled Claimant's account. Claimant alleged that the transactions in his account were in high frequency, poor quality and reflected no identifiable trading technique. Claimant alleged that the investments made by Kirk, in the stock market, were in direct violation of the written instructions that no investments in the stock market would be made. Claimant alleged that Shearson failed to supervise Kirk.

Respondents denied each and every allegation of wrongdoing and specifically maintained that Claimant's account suffered losses due to Claimant's withdrawals of cash and his liquidation of securities to pay for luxury purchases. Respondents maintained that although Claimant's counsel attempted to gain discretionary authority over Claimant's account, the discretionary account forms which were sent to her were never returned to Shearson in completed form. Respondents maintained that the account remained controlled by and for the exclusive benefit of Claimant. Respondents maintained that Claimant asked for and received an American Express card through his account. Respondent maintained that not long thereafter, Claimant, disregarding the advice of Kirk, wrote many checks on his account and used his American Express card for consumer purchases. Respondents maintained that any damages suffered by the Claimant's account were the result of Claimant own actions. Respondents maintained that they were not Claimant's guardian and were not obligated to control Claimant's personal financial decisions. Respondents maintained that every transaction in Claimant's account and the value of his account was disclosed to Claimant in writing. Respondents maintained that the securities transaction made by Claimant were directed by Claimant and were consistent with a strategy to attempt to generate profits through aggressive trading of securities transactions.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$123,688.00, punitive damages, costs and attorney's fees.

Respondents requested that Claimant's claim be dismissed and that they be awarded costs and expenses incurred in defending this claim.

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.

That Respondent Motion to Disqualify Claimant's Counsel was denied.

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. That Respondents are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of FOUR THOUSAND AND 00/100 DOLLARS (\$4,000); inclusive of interest.
2. That the parties shall bear their respective costs, including attorneys' fees.
3. That Claimant's claim for punitive damages is denied in its entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed for the three hearing sessions that were conducted in this matter.

That Claimant's hearing session deposit of \$750 shall be retained to cover the costs of the initial hearing session.

That Respondents are jointly and severally assessed forum fees in the amount of \$1500 for the remaining two hearing sessions that were conducted.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

Alexander Heckman  
Alexander Heckman

Date of Decision: November 19th, 1992

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Concurring Arbitrator's Signature

Name

  
Edgar T. Bellinger

Public/Industry

Public

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Concurring Arbitrator's Signature  
Name

Public/Industry

David Freund  
David Freund

Date of Decision: November 19th, 1992