

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Fred Alvaro, Jr.

92-00737

Name of Respondents

Shearson Lehman Brothers, Inc.
Jeffrey Swartz

REPRESENTATION

For Claimant Fred Alvaro, Jr. ("Claimant"): he appeared pro se.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Jeffrey Swartz ("Swartz"):
Robert N. Rapp, of Calfee, Halter et al.

CASE INFORMATION

Statement of Claim filed: March 2, 1992

Amended Statement of Claim filed: June 26, 1992

Claimant's Submission Agreement signed on: June 25, 1992.

Joint Statement of Answer filed by Respondents on: July 23, 1992.

Respondent Shearson's Submission Agreement signed on: July 16, 1992.

Respondent Swartz's Submission Agreement signed on: July 21, 1992.

HEARING INFORMATION

Hearing Date/Session: April 20, 1993/1 session.

Hearing Location: Columbus, OH.

CASE SUMMARY

Claimant alleged he began his association with Respondents in 1989 and first met Swartz

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when he inquired about utility stocks owned by the Estate of Robert F. Wiedeman, of which he was Executor. Claimant alleged that in March 1989, Swartz persuaded him to transfer certain monies of the Estate into a Shearson cash management account. Claimant also alleged Swartz assured him he had handled "many estate accounts" and that Claimant should rely upon his judgment. Claimant alleged he relied on Swartz's representations by agreeing to advice given by Swartz regarding management of the Estate funds.

Claimant further alleged that in July 1989, Swartz persuaded him to place some of the Estate funds, then in the cash management account, into an "income fund" which Swartz stated would produce a higher return. Claimant alleged he agreed to Swartz's recommendation on the condition there would be no risk of loss of his monies and that these monies would be available for immediate liquidation. Claimant further alleged Swartz stated he understood Claimant's concerns and represented that there was no risk of losing the funds. Claimant alleged that in February 1990, he discovered the cash fund investment had decreased, contacted Swartz and that fourteen (14) days later Swartz stated the lesser balance was correct and had resulted from a change in interest rates.

Claimant also alleged Swartz negligently recommended an unsuitable investment; made misrepresentations; breached his fiduciary and agency duties; and breached his contractual duties.

Claimant further alleged Shearson failed to supervise Swartz; breached its fiduciary and agency duties; breached its contractual duty; and violated federal and state securities laws.

Respondents alleged Claimant began his association with Respondents in December 1988. Respondents denied persuading him to transfer certain funds of the Estate into a Shearson cash management account. Respondents denied Swartz made a representation to Claimant concerning what Claimant should rely on. Respondents asserted Claimant was responsible for making his own decisions in the performance of his duties as Executor and was qualified, as he represented himself to be a securities broker, to make independent investment decisions. Respondents maintained Swartz rendered no advice to Claimant. Also, Respondents denied Swartz persuaded Claimant to move some of the Estate monies from the cash management account into an "income fund". Respondents alleged Swartz presented MFS Charter Income Trust ("MFS") for Claimant's consideration because it offered a comparatively high yield and was the product of a respected manager. Respondents alleged Swartz did not represent to Claimant the investment involved no risk of loss of principal. Respondents alleged Swartz represented what was explained in the prospectus with the belief the investment matched Claimant's objectives and preferences.

Respondents maintained Claimant was in possession of complete information concerning the

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market value of shares of MFS; he and Swartz remained in frequent contact; and that Respondents did not make misrepresentations regarding Claimant's account.

Respondents asserted Swartz did not make an unsuitable recommendation or breach any fiduciary or agency duty owed to Claimant. Respondents asserted Shearson breached no legal duty or standard of care relating to supervision of Swartz. In addition, Respondents alleged that neither Respondent caused Claimant to suffer any loss and that his market loss occurred when he elected to sell MFS in February 1990. Finally, Respondents asserted that whatever principal loss realized by Claimant on his sale of the investment was offset by income distributions received from the investment during the period it was held.

RELIEF REQUESTED

Claimant requested: actual damages in excess of \$17,000.00, plus interest; punitive damages; attorneys' fees and costs.

Respondents requested: denial of all claims by Claimant, in their entirety; forum fees and costs.

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 original remains 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. The claims of Claimant, Fred Alvaro, Jr. are denied;
2. All other claims are denied;
3. Each party shall bear its own expenses, including attorneys' fees, except that Respondent Shearson Lehman Brothers, Inc. is hereby liable and shall pay to Claimant the sum of \$100.00 and Respondent Jeff Swartz is hereby liable and shall pay to Claimant the sum of \$100.00. Said amounts to represent partial payment of Claimant's hearing session deposit.

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FORUM FEES

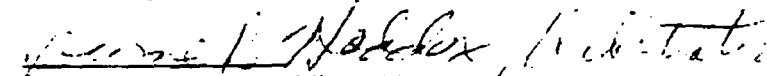
Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

1 session X \$300.00 = \$ 300.00 minus hearing session deposit of \$300.00 = net \$ 0.00 due.

Forum fees Assessed Against:

1. Claimant Fred Alvaro, Jr. is hereby liable in the amount of \$100.00; however, in lieu of further payment, the NASD shall retain the \$300.00 hearing session deposit;
2. Respondent Shearson Lehman Brothers, Inc. is hereby liable in the amount of \$100.00 as noted above;
3. Respondent Jeff Swartz is hereby liable in the amount of \$100.00 as noted above.

Concurring Arbitrators' Signatures


Jerome B. Haddox/Public Arbitrator

Date of Decision: May 12, 1993

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FORUM FEES

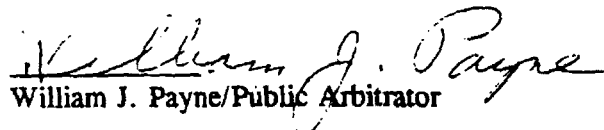
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William J. Payne/Public Arbitrator

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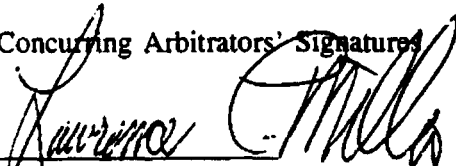
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Concurring Arbitrators' Signatures


Lawrence C. Miller/Industry Arbitrator

~~5/15/93~~ EXECUTED

Date of Decision: May 12, 1993