

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Douglas T. and Annette M. Peterson

92-00761

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimants Douglas T. and Annette M. Peterson ("Claimants"): James R. Adams, Esq., of Frost & Jacobs.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson"): Thomas M. Knepper, Esq. of Neal Gerber et al.

CASE INFORMATION

Statement of Claim filed: March 4, 1992.

Claimants' Submission Agreement signed on: February 7, 1992.

Statement of Answer filed by Respondent on: June 15, 1992.

Respondent's Submission Agreement signed on: May 7, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: June 29, 1993/2 sessions  
June 30, 1993/2 sessions

Hearing Location: Marriott Hotel, Dayton, OH.

CASE SUMMARY

Claimants alleged that neither of them had any prior investment experience at the time they invested with Respondent. Claimant alleged Douglas Peterson ("D. Peterson") transferred monies from his inheritance to an account with Shearson after his registered representative Gregory Morehead ("Morehead") assured him that he was an expert in investment strategies and would recommend appropriate securities. Claimants alleged Morehead did not inquire as to Claimants' investments objectives, experience, financial status or their degree of investment sophistication and learned of their investment objectives after Annette Peterson ("A. Peterson") volunteered the information. A. Peterson alleged she told Morehead she wanted Claimants funds to be safely invested to meet their conservative investment objectives. Claimants alleged Morehead began a strategy of high-risk, excessive options trading; churned their account; and engaged in unsuitable and unauthorized trading. Claimants alleged Morehead did not disclose the high-risk nature of the investments; that they do not recall receiving or signing a copy of an Options Agreement; that Morehead failed to disclose the consequences of opening a margin account; and that Morehead opened an Individual Retirement Account for D. Peterson without his knowledge.

Finally, Claimants alleged Shearson did not appropriately supervise and was negligent in its supervision of Morehead and that Shearson is responsible for the

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actions and inactions of Morehead and is liable to them for the resulting losses and disgorgement of income.

Respondent alleged D. Peterson completed a New Account Application/Options Suitability form which indicated he had previously traded equity options, both as a buyer and seller for five years; that the application also reflected that an Options Risk Disclosure document was mailed or delivered to D. Peterson; and that D. Peterson signed the Shearson Client Agreement. Shearson contended that its Compliance Department undertakes to re-confirm directly with any new options customer that the information which its records show relative to the clients' investment objectives, financial worth and related economic facts are correct. Shearson maintained the Compliance Department performs this activity through the sending of a "negative consent" letter and that the information previously recorded by D. Peterson had been reproduced and sent directly to him. Shearson asserted that over the course of trading in this account as well as in a second individual account, at least two other "negative consent" letters were sent and D. Peterson did not contact Shearson's Compliance Department or Cincinnati branch office manager regarding these letters.

Shearson asserted that the underlying speculative nature of the securities which D. Peterson transferred into his Shearson account from PaineWebber, Inc. and Dain Bosworth Inc. were inconsistent with long-term appreciation with safety. Respondent contended D. Peterson controlled the joint account at Shearson; was interested in aggressive speculation and commented to Morehead to the effect that he did not want his spouse to know or fully appreciate the speculative nature of the trading.

Shearson maintained the account was not churned, as it provided discounted commission rates on many trades made by D. Peterson and that many trades were D. Peterson's own ideas based on articles in USA Today. Shearson asserted this was a non-discretionary account; D. Peterson controlled it; and that he spoke with Morehead at least twice every business day.

#### RELIEF REQUESTED

Claimants requested: rescission of all improper trades and investments; disgorgement of all commissions; reimbursement of interest charged on the margin account; compensatory damages in the amount of \$75,000.00, inclusive of interest; punitive damages; attorneys' fees; and costs.

Respondent requested: an award be entered in its favor; costs and expenses.

#### 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.

The arbitrators determined they will deny Respondent's Motion to Exclude Punitive Damage Claims.

#### 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. Respondent is hereby liable and shall pay to Claimants the sum of

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\$44,000.00;

2. Claimants claim for punitive damages is denied;
3. All other claims are denied;
4. Each party shall bear its own expenses, including attorneys' fees, except that Respondent is hereby liable and shall pay to Claimants the sum of \$600.00. Said amount to reimburse Claimants the \$600.00 hearing session deposit previously deposited to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$250.00 non-refundable filing fee and the following Forum Fees are assessed.

4 sessions X \$600.00 = 52,400.00 minus hearing session deposit of \$600.00 = net \$1,800.00 due.

Forum fees Assessed Against:

1. Respondent is hereby liable and shall pay to the NASD the sum of \$1,800.00.

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

Arbitrator Signature

  
Jerome B. Haddox/Public Arbitrator

Date of Decision: July 19, 1993

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$250.00 non-refundable filing fee and the following Forum Fees are assessed.

4 sessions X \$600.00 = \$2,400.00 minus hearing session deposit of \$600.00 = net \$1,800.00 due.

Forum fees Assessed Against:

1. Respondent is hereby liable and shall pay to the NASD the sum of \$1,800.00.

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

Arbitrator Signature



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Scott Litwin/Industry Arbitrator

Date of Decision: July 19, 1993

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