

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Comsentech, Inc. and Stephen W. Krajicek

92-00873

Name of Respondents

Shearson Lehman Brothers, Inc.;
Russell Pagel

REPRESENTATION

For Claimants: Comsentech, Inc and Stephen W. Krajicek were represented by Stephen W. Krajicek, President of Comsentech, Inc.

For Respondents: Shearson Lehman Brothers, Inc. and Russell Pagel were represented by Mary Hogan Greer, Esq. of Hutcheson & Grundy, L.L.P., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: March 12, 1992.

Claimant Comsentech, Inc.'s Submission Agreement signed on: February 26, 1992 by Stephen W. Krajicek, President, Comsentech, Inc.

Claimant Stephen W. Krajicek's Submission Agreement signed on: February 26, 1992.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Russell Pagel on: August 3, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: August 3, 1993 by William A. Hohausser, Associate General Counsel, Shearson Lehman Brothers, Inc.

Respondent Russell Pagel's Submission Agreement signed on: July 30, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: February 12, 1993 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants Comsentechn, Inc. and Stephen W. Krajicek ("Krajicek") alleged that Respondent Russell Pagel ("Pagel"), while employed by or acting as an agent for Respondent Shearson Lehman Brothers, Inc. ("Shearson") misrepresented the risks and recommendations of stocks in Automated Security Holdings ("ADR") and Hadson Corp. ("Hadson"), resulting in Claimants' purchasing and holding the investments. Krajicek specifically alleged that:

1. On April 9, 1991, Pagel called Krajicek to present an investment opportunity in ADR and Hadson, making several representations regarding the quality and expected price increase of the investments;
2. Based upon the recommendations, Krajicek purchased 500 shares of ADR at \$10.00 per share and 1,000 shares of Hadson at \$2.88 per share;
3. On April 26, 1991, Krajicek received his first statement from Shearson and discovered that ADR had dropped to \$7.78. Krajicek immediately called Pagel to complain. Pagel indicated that the price drop reflected the weaker dollar and that the stock was still strongly recommended by Shearson. Krajicek suggested that Shearson return his investment and hold the stock themselves, but was told that this was not possible;
4. From April 26 through June 6, 1991, Krajicek made numerous calls to Pagel, suggesting the return of his investment or sale of the stocks. Pagel continued his positive recommendations and advised to hold the stocks;
5. On June 6, 1991, Comsentechn, Inc. purchased 500 additional shares of ADR following Pagel's strong recommendations and advice that price averaging would be wise. From June 6 through October 10, 1991, the prices continued to fall and Pagel maintained the hold recommendation;
6. On October 10, 1991, the account was moved to the New York office of Shearson, with it being suggested that the New York office could handle the account more effectively and that it did not share the same enthusiasm for the investments; and
7. On January 14, 1992, the New York Shearson office recommended the sale of the positions, which were sold at substantial loss.

Based upon the above allegations, Krajicek alleged that Shearson overstated the stock opportunities, refused to consider account adjustments, wrongly recommended hold and subsequent buy orders, realized financial gain through commissions, and that the losses occurred

through no fault of Claimants.

Respondents Shearson and Pagel denied the material allegations of the Statement of Claim, alleging that:

1. Krajicek was a sophisticated, knowledgeable and experienced investor who had accounts at several other brokerage firms and whose account objectives were "appreciation with risk";
2. Krajicek immediately engaged in a speculative course of investment after opening his accounts and made a profit of 16% on Pagel's first recommendation to purchase Brunswick Corp. stock;
3. When the account values declined during April 1991, Krajicek's decision was to double his holdings in ADR, using the investment strategy of lower price averaging. When this strategy was unsuccessful, Krajicek demanded that Shearson return his original investment to him;
4. The generation of commissions was not a factor in Pagel's recommendations because gross commissions totaled less than \$500.00, with Pagel's net commissions totaling approximately \$150.00;
5. Pagel's recommendations were not overstated, but were based upon the information contained in the analyst research reports;
6. Krajicek was aware of the risks of his investments because of his numerous telephone conversations with Pagel and his prior investment experiences; and
7. If an award were to be made, the calculation of damages should be on the date of Krajicek's first request for a return of his initial investment, not after Krajicek chose to purchase additional shares and retain ownership for over nine months before deciding to liquidate his positions.

RELIEF REQUESTED

Claimants requested that the arbitrator enter an award against Respondents in the amount of the original investment minus the net proceeds from the sale of the stocks for a total amount of damages in the sum of \$6,554.74.

Respondents requested that the Statement of Claim submitted by Comsentech, Inc. and Stephen W. Krajicek be dismissed in its entirety, and that Respondents be awarded their costs, including attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleading, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Hearing Session x \$200.00 per hearing session = \$200.00.

The National Association of Securities Dealers, Inc. shall retain the \$75.00 non-refundable claim filing fee and refund the \$200.00 hearing session deposit previously deposited by the Claimants, Comsentech, Inc. and Stephen W. Krajicek. Respondent Shearson Lehman Brothers, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$200.00.

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

Arbitrator's Signature

Name

Date

Mark A. Banks-Golub, Esq.

June 4, 1993

Mark A. Banks-Golub, Esq.

Date of Service on Parties: 6-4-93