

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between
Ann E. Pelc
Claimant
vs.
Shearson Lehman Brothers, Inc.
A.G. Edwards & Sons, Inc.
Respondents

CASE #92-00948
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 18, 1992, Claimant Anne E. Pelc, through her counsel Norman R. Freeman, Esq. of Tucson, Arizona, alleged that Respondent Shearson Lehman Brothers, Inc. erroneously removed \$15,000.00 in Texas 7% 9-1-12 Municipal Bonds from her account, which had been transferred from Respondent A.G. Edwards & Sons, Inc. The Claimant further alleged that Respondent Shearson Lehman Brothers, Inc. had originally confirmed receipt of all \$15,000.00 bonds and then reimbursed her for only \$10,000.00, claiming Respondent A.G. Edwards & Sons, Inc. had control of the other \$5,000.00. Claimant Ann E. Pelc further alleged that Respondent A.G. Edwards & Sons, Inc. has also denied responsibility for the lost bonds.

Respondent A.G. Edwards & Sons, Inc., through its in-house counsel, M. Jane Matoesian, Esq., maintained that the Claimant's entire position of the Bonds was transferred to E.F. Hutton & Co., Inc. n/k/a Shearson Lehman Brothers, Inc., and that upon completion of the transfer, it fulfilled all of its obligations relative to the transfer of these bonds.

Respondent Shearson Lehman Brothers, Inc., through its counsel, Gary Dukarich, Esq. of Lewis and Roca, Tucson, Arizona, maintained that the \$5,000.00 worth of bonds in dispute were located and found to have been electronically deposited into an account with A.G. Edwards & Sons, Inc. in the name of Mickey Ginn, and that A.G. Edwards & Sons, Inc. had failed to make the transfer which would make the Claimant whole. Respondent Shearson Lehman Brothers, Inc. filed a crossclaim against A.G. Edwards & Sons, Inc. in which it requests full reimbursement of any award against Shearson Lehman Brothers, Inc. since Respondent A.G. Edwards & Sons, Inc. holds the liability in this matter.

Respondent A.G. Edwards & Sons, Inc. in reply to Respondent Shearson Lehman Brothers, Inc. crossclaim, maintained that it was Respondent Shearson Lehman Brothers, Inc. that erroneously transferred \$5,000.00 Bonds to customer Mickey Ginn, who also had an account with Shearson Lehman Brothers, Inc., and that when this customer asked his position be moved to A.G. Edwards & Sons, Inc., Shearson Lehman Brothers, Inc. moved the entire position. Respondent A.G. Edwards & Sons, Inc. also maintained that they had no knowledge that part of this position belonged to Claimant Ann Pelc, and that it was Respondent Shearson Lehman Brothers, Inc. that should be held liable for its error.

In a response to Respondent A.G. Edwards & Sons, Inc. reply, Respondent Shearson Lehman Brothers, Inc. contended that regardless of who initially made the error, it has been unsuccessful in retrieving the \$5,000.00 misplaced Bonds that are now with A.G. Edwards & Sons, Inc.

RELIEF REQUESTED

Claimant Ann E. Pelc requested the return of the \$5,000.00 Texas 7 $\frac{1}{2}$ 9-1-12 Municipal bond, plus interest, along with \$1,500.00 attorney's fees and \$115.00 in costs.

Respondent Shearson Lehman Brothers, Inc. requested that part of the Claimant's claim be stricken and that the claims of the Claimant be dismissed. Respondent Shearson Lehman Brothers, Inc. also requested that it be reimbursed by A.G. Edwards & Sons, Inc. for any damages awarded against it; along with costs and attorney's fees.

Respondent A.G. Edwards & Sons, Inc. requested the claims of the Claimant be dismissed and that it be awarded it's costs.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stephen P. Bedell, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 28, 1992, by the Respondent A.G. Edwards & Sons, Inc. on May 26, 1992 but not signed by Respondent Shearson Lehman Brothers, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Shearson Lehman Brothers, Inc. is liable and shall replace in kind the \$5,000 Texas 7% 9-1-12 Municipal Power Agency Bond received by Shearson Lehman Brothers, Inc. on March 17, 1988 and subsequently removed from the Claimant's account on March 18, 1988.
2. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay interest earned on the \$5,000 Texas 7% 9-1-12 Municipal Power Agency Bond after March 18, 1988 until properly credited to Claimant's current securities account.
3. Respondent Shearson Lehman Brothers, Inc. motion to strike material from the claim is denied.
4. The claims of Claimant Ann E. Pelc against Respondent A.G. Edwards & Sons, Inc. are dismissed in their entirety.
5. The crossclaim of Shearson Lehman Brothers, Inc. against A.G. Edwards & Sons, Inc. is dismissed in its entirety.
6. The parties shall bear their respective costs and attorney's fees.
7. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay \$125.00 to Claimant Ann E. Pelc as reimbursement.

Page Four
Award 92-00948

AFFIRMATION

I, STEPHEN P. BEDELL, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 28, 1992