

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Charles & Lola Wentz

92-00977

Name of Respondents

Shearson Lehman Hutton, Inc.  
Robert Simmen

---

**REPRESENTATION**

For Claimants at the hearing: Bruce Pearson of Fargo, North Dakota.

For Respondents at the hearing: Skip Durocher, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed: March 16, 1992. Claimants' Submission Agreement signed on: February 12, 1992.

Joint Statement of Answer filed by Respondents on: July 16, 1992. Respondent, Shearson Lehman Hutton's Submission Agreement signed on: August 25, 1992 by Ann Parry. Respondent, Robert Simmen's Submission Agreement signed on: August 12, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: March 26, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

**CASE SUMMARY**

Claimants, Charles and Lola Wentz ("Claimants") alleged that Respondent, Shearson Lehman Brothers, Inc., ("Shearson") through its representative, Respondent Robert Simmen

"Simmen") churned Claimants' account. Claimants alleged Simmen solicited them with the plan of investing in high quality Blue Chip stocks. Claimants alleged that Simmen informed them that he would sell their zero coupon bonds for no commission. Claimants further alleged that instead of trading in Blue Chip stocks, Simmen bought stocks of less dubious value, namely, Lakehead Pipe Line Partners, First Indiana Corporation, Compression Labs, Galaxo Holding, S.F.ADR, Agricultural Minerals Company, Cambridge Bio-Tec, and American Home Products. Claimants also alleged that there was so much trading in their accounts, they were virtually denied any chance of realizing a profit.

In their Joint Statement of Answer, Shearson and Simmen ("Respondents") denied responsibility for any of the sums Claimants requested in their Statement of Claim. Respondents alleged that Charles Wentz is a knowledgeable investor, understood the risks and merits of transactions in his account and of directing many of those transactions. Respondents denied that they had any discretionary authority to trade on Claimants' behalf. Respondents further alleged that they never made a purchase or sale without Claimants' express authority. Respondents denied churning Claimants' account or making any misrepresentations of material fact in connection with the sale of the interests to Claimants. Respondents alleged that all transactions were fully disclosed before they were made, in the written confirmations and monthly statements that Claimants received. Respondents also alleged that Claimants received a net profit from the transactions in their account, after accounting for commissions.

### **RELIEF REQUESTED**

Claimants requested an award of \$21,122.00 for actual commissions, \$25,000.00 in punitive damages, \$7,000.00 in opportunity costs, \$500.00 for hearing fees and \$4,000.00 for representation costs.

Respondents requested that the Statement of Claim be denied and that Respondents be awarded their costs and attorneys' fees incurred in responding to the Statement of Claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents moved for a directed verdict at the close of Claimants' case on the grounds that Claimants had failed to prove the elements of their claim. The panel denied the motion.

The parties agreed that the Award may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **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. Claimant's request for the sum of \$21,122.00 for actual commissions is denied;
2. Claimant's request for punitive damages is denied;
3. Claimant's request for \$7000.00 in opportunity costs is denied;
4. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees/representative's fees, other than those specifically enumerated herein.

**FORUM FEES**

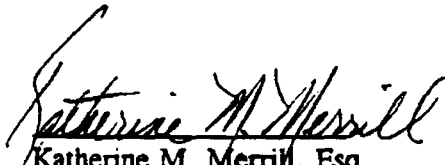
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$500 = \$1,000 minus hearing session deposit of \$500 = net \$500 due.

Forum fees Assessed Against: Claimants Charles and Lola Wentz in the sum of \$500.00.

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

**By The Arbitration Panel:**

  
Katherine M. Merrill, Esq.  
Presiding, Public Arbitrator

Dated:

4/20/93

\_\_\_\_\_  
Angela R. Banga, Esq.  
Public Arbitrator

\_\_\_\_\_  
David M. Ginter  
Industry Arbitrator

Date Award Served By The NASD: 4-26-93

1. Claimant's request for the sum of \$21,122.00 for actual commissions is denied;
2. Claimant's request for punitive damages is denied;
3. Claimant's request for \$7000.00 in opportunity costs is denied;
4. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees/representative's fees, other than those specifically enumerated herein.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$500 = \$1,000 minus hearing session deposit of \$500 = net \$500 due.

Forum fees Assessed Against: Claimants Charles and Lola Wentz in the sum of \$500.00.

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

**By The Arbitration Panel:**

**Dated:**

\_\_\_\_\_  
Katherine M. Merrill, Esq.  
Presiding, Public Arbitrator

Angela R. Banga  
Angela R. Banga, Esq.  
Public Arbitrator

\_\_\_\_\_  
4/20/93

\_\_\_\_\_  
David M. Ginter  
Industry Arbitrator

Date Award Served By The NASD: 4-26-93

1. Claimant's request for the sum of \$21,122.00 for actual ~~commissions~~ is denied;
2. Claimant's request for punitive damages is denied;
3. Claimant's request for \$7000.00 in opportunity costs is denied;
4. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees/representative's fees, other than those specifically enumerated herein.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$500 = \$1,000 minus hearing session deposit of \$500 = net \$500 due.

Forum fees Assessed Against: Claimants Charles and Lola Wentz in the sum of \$500.00.

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

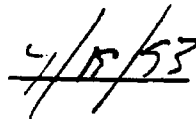
**By The Arbitration Panel:**

**Dated:**

\_\_\_\_\_  
Katherine M. Merrill, Esq.  
Presiding, Public Arbitrator

\_\_\_\_\_  
Angela R. Banga, Esq.  
Public Arbitrator

  
\_\_\_\_\_  
David M. Ginter  
Industry Arbitrator

\_\_\_\_\_  
  
4/15/93

Date Award Served By The NASD: 4-26-93