

9306164

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

**In the Matter of the Arbitration Between**

**Name of Claimant**

**John D. Dowdall**

**and**

**Name of Respondents**

**Shearson Lehman Brothers, Inc.,  
Mark J. Stephenson and  
Lawrence Roberts**

6/21/93  
Dallas  
\$143,711  
\$25,000

92-01011

**REPRESENTATION OF PARTIES**

John D. Dowdall ("Claimant") was represented by Fred T. Bennett, Esq. of Stillman & Bennett, P.C., Dallas, Texas.

Shearson Lehman Brothers, Inc., Mark J. Stephenson and Lawrence Roberts ("Respondents") were represented by Pete S. Michaels, Esq. of Shearson Lehman Brothers, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 23, 1992. Submission Agreement of Claimant John D. Dowdall was signed on March 31, 1992.

Statement of Answer was filed on behalf of Respondents Shearson Lehman Brothers, Inc., Mark J. Stephenson and Lawrence Roberts on or about May 29, 1992.

**HEARING INFORMATION**

The hearing was held on Thursday, May 27, 1993 for two (2) sessions and Friday, May 28, 1993 for two (2) sessions in Dallas, Texas for a total of four (4) sessions.

**CASE SUMMARY**

Claimant alleged that Shearson Lehman Brothers, Inc., Mark J. Stephenson and Lawrence Roberts ("Respondents") engaged in excessive activity in his account; recommended speculative poor quality securities; recommended purchases beyond his capacity; and engaged in day trading.

0306164

N.A.S.D. Arbitration No. 92-01011

Award Page 2 of 4

Claimant also alleged that Respondents made material misrepresentations with respect to the status of the account by stating that the account statement did not accurately state the value of the account. Claimant further alleged that the acts of the Respondents violated the Texas Deceptive Trade Practices Act.

Respondents denied the allegations set forth in the Statement of Claim and stated that the Claimant was a sophisticated and savvy investor with investment objectives of speculation and income with risk. Respondents further stated that the Claimant requested a new account executive because, Mr. Roberts was too conservative. Respondents also asserted affirmative defenses including but not limited to the following: the Statement of Claim fails to state a claim upon which relief may be granted; the claims are barred by the principles of waiver and estoppel; the claims are barred by the doctrines of laches and the applicable statutes of limitations; the claims are barred by the doctrines of ratification and affirmation; and failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested an award of unspecified damages representing trading losses for the year of 1989; unspecified damages representing loss of opportunity income in 1989; damages totalling \$107,919.00 representing trading losses for 1990; \$10,792.00 which represents loss of return on the aforementioned trading losses for 1990; unspecified damages representing trading losses for the year of 1991; unspecified damages representing loss of opportunity income in 1991; a return of all commissions believed to be in excess of \$75,000.00; damages under the Texas Deceptive Trade Practices Act; exemplary damages; costs; and attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded all costs and attorney's fees that they have incurred in this matter.

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

Respondents Shearson Lehman Brothers, Inc., Mark J. Stephenson and Lawrence Roberts did not file with the N.A.S.D. properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at or offered testimony at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with the N.A.S.D..

### **FINDINGS OF FACT**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the

9306164

undersigned arbitrators have made the following Findings of Fact:

1. The undersigned arbitrators unanimously found that churning was present in this case, but was unable to determine the responsible party for such churning.
2. The undersigned arbitrators unanimously found that there was a lack of supervision of the activity in this account.
3. The undersigned arbitrators unanimously found that the Claimant had ample opportunity to transfer his account to another broker and/or brokerage firm in order to mitigate his damages in this matter.

### **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 Shearson Lehman Brothers, Inc. shall be and hereby is liable for and shall pay to the Claimant the sum of **fifteen thousand dollars (\$15,000.00)**.
2. Respondent Mark J. Stephenson shall be and hereby is liable for and shall pay to the Claimant the sum of **five thousand dollars (\$5,000.00)**.
3. Respondent Lawrence Roberts shall be and hereby is liable for and shall pay to the Claimant the sum of **five thousand dollars (\$5,000.00)**.
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall refund the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Respondents Shearson Lehman Brothers, Inc. Mark J. Stephenson and Lawrence Roberts shall be and hereby are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$3,000.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

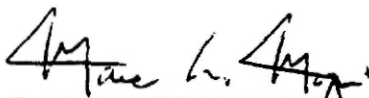
The N.A.S.D. shall retain postponement fees in the amount of \$750.00 previously deposited with

9306164

N.A.S.D. Arbitration No. 92-01011

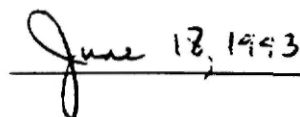
Award Page 4 of 4

the N.A.S.D. on behalf of the Claimant. The N.A.S.D. shall retain postponement fees in the amount of \$750.00 previously deposited with the N.A.S.D. on behalf of Respondents. Fees are payable to the National Association of Securities Dealers, Inc.



Mark A. Myrin, Esq.  
Public Arbitrator, Presiding Chair

Dated:



Winston C. Fournier  
Public Arbitrator

Raymond E. Wooldridge  
Industry Arbitrator

9306164

N.A.S.D. Arbitration No. 92-01011

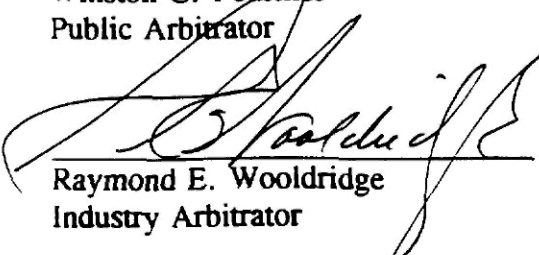
Award Page 4 of 4

the N.A.S.D. on behalf of the Claimant. The N.A.S.D. shall retain postponement fees in the amount of \$750.00 previously deposited with the N.A.S.D. on behalf of Respondents. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

\_\_\_\_\_  
Mark A. Myrin, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Winston C. Fournier  
Public Arbitrator

  
\_\_\_\_\_  
Raymond E. Wooldridge  
Industry Arbitrator

\_\_\_\_\_  
June 24, 1993

930616A

N.A.S.D. Arbitration No. 92-01011

Award Page 4 of 4

the N.A.S.D. on behalf of the Claimant. The N.A.S.D. shall retain postponement fees in the amount of \$750.00 previously deposited with the N.A.S.D. on behalf of Respondents. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

\_\_\_\_\_  
Mark A. Myrin, Esq.  
Public Arbitrator, Presiding Chair

Winston C. Fournier  
Winston C. Fournier  
Public Arbitrator

\_\_\_\_\_  
June 21, 1993  
\_\_\_\_\_

\_\_\_\_\_  
Raymond E. Wooldridge  
Industry Arbitrator