

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	:	
William Mazur	:	
	:	
	:	
Claimant	:	CASE #92-01102
	:	AWARD
vs.	:	
	:	
Shearson Lehman Brothers, Inc.	:	
	:	
Respondent	:	
	:	

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 30, 1992, Claimant William Mazur who appeared Pro Se, alleged that in 1989 he opened an account with Mr. Gorla, Financial Consultant with Respondent Shearson Lehman Brothers, Inc./Cooper Network Paramus, N.J. whereby the Cooper Network was represented as very conservative "retirement specialists" and it stressed the safety of their customer's funds. Claimant further alleged that he notified Respondent, by and through Mr. Gorla, that safety of principal was his primary objective while earning income with the lowest possible risk, at which time, SLH Investment Portfolio was crafted for Claimant's objectives. Claimant contended that Respondent, by and through, Mr. Gorla, recommended the purchase of a MFS Government Security High Yield Fund and the MacKenzie Growth and Income Fund, at which time, Respondent failed to provide the MFS prospectus or relevant documentation, which Claimant requested directly from MFS, only to discover that it clearly stated that "preservation of capital" was not an objective of the MFS investment, therefore, this MFS investment was inappropriate given Claimant's investment objectives. Claimant further contended that on August 9, 1991 when he sold the MFS Government Security High Yield, it was sold at a reduction of 16.6% in two years while the Dow Jones averages were steadily rising. Claimant asserted that his objective was always safety first, and the SLH Investment Portfolio crafted for him stressed, MFS "safety" whereby, Respondent could have recommended two other MFS funds dealing with Government Securities, both of which state Presentation of Capital as an objective. Claimant further asserted that when Respondent by and through Mr. Gorla, recommended the MacKenzie Growth & Income Fund it was an unproven Canadian Mutual Fund which had not yet been capitalized in full and as of March 7,

1991 this Fund had the worst record of 192 Growth and Income Funds, and subsequently, in August 1991, the MacKenzie fund was sold at a loss. Claimant argued that he entrusted his entire IRA distribution to Respondent SLH Cooper Network to invest his funds consistent with the objectives mutually agreed to in all of the meetings and discussions with Respondent. Claimant further argued that Respondent inappropriately handled his account in relation to his objectives, thus he sustained financial loss.

Claimant requested that Respondent's Statement of Answer should be barred due to their failure to file their Answer in a timely manner in accordance with Section 25(b)(2) of the NASD Code of Arbitration Procedure.

Respondent, Shearson Lehman Brothers, Inc. by and through their in-house counsel William A. Hohausser, Esq. maintained that in July 1989 Claimant William Mazur opened an account with Financial Consultant, Jeff Gorla; a member of the "Cooper Network"; a group of registered representatives whose primary focus was financial planning for their clients' retirement whereby income generation with relative safety of principal is the most common investment strategy and the Cooper Network brokers are careful to recommend a balanced portfolio for their clients. Respondent further maintained that when Mr. Gorla opened an account for Claimant the new account form indicated Income with Safety as the primary objective and that it was not a discretionary account, therefore, each and every transaction executed in the account was effected with the prior approval of Claimant. Respondent contended that Mr. Gorla advised Claimant to invest in several certificates of deposit ("CD's"), a GNMA Pass-thru fund, a FNMA Collateralized Mortgage Fund, a MFS Government Security High-Yield fund, the Gabelli Fund, the MacKenzie Fund, at which time, these recommendations were made to Claimant through an Investment Portfolio whereby Claimant made many changes to the recommendations, both in terms of the dollar amount to be invested as well as the type of investment vehicle. Respondent further contended that Mr. Gorla fully informed Claimant that each of these investments would carry a different risk/reward ratio and supplied Claimant with all the relevant documentation with respect to each of the investments selected. Respondent asserted that after receiving Claimant's authorization, Mr. Gorla effected those purchases and the only subsequent transactions were additional purchases of CD's. Respondent further asserted that Claimant received monthly statements reflecting the status of his investments, particularly the dividends he was receiving each month and the price of the funds in which Claimant invested. Respondent argued that Claimant has sustained no losses for which he should be compensated and

the account performed admirably, via investments thoroughly suitable for Claimant.

RELIEF REQUESTED

Claimant, William Mazur requested \$4,323.87 in actual damages.

Respondent, Shearson Lehman Brothers, Inc. requested the claim be dismissed in its entirety and they be awarded costs, including attorney's fees.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Nancy Barrett, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 23, 1992 and by the Respondent on May 26, 1992.

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. The Claimant's Motion to Bar Respondent, Shearson Lehman Brothers, Inc. Statement of Answer is denied.
2. The claim of Claimant William Mazur against Respondent Shearson Lehman Brothers, Inc. is dismissed.
3. The parties shall bear their respective costs, including attorneys' fees.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant William Mazur shall be retained by the NASD, Inc.

AFFIRMATION

I, **NANCY BARRETT** 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: October 6, 1992