

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants/Counterrespondents

Mark Schneider
Frank DiMaria
Rosenthal Collins Group

No. 92-01259

Name of Respondent/Counterclaimant

Shearson Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

For Claimants/Counterrespondents: Kenneth F. Berg, Esq. of Fishman & Merrick, P.C., Chicago, Illinois.

For Respondent/Counterclaimant: Thomas M. Knepper, Esq. of Neal Gerber & Eisenberg, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: April 9, 1992.

Claimants' Submission Agreement signed on: April 8, 1992.

Statement of Answer and Counterclaim filed by Respondent, Shearson Lehman Brothers, Inc. on: April 21, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: April 20, 1992.

Claimants' Response to Shearson's Counterclaim filed: May 28, 1992.

Respondent's Amendment to Counterclaim filed: July 1, 1992.

Claimants' Amended Response to Respondent's Counterclaim filed:
July 22, 1992.

HEARING INFORMATION

Hearing dates: November 10, 1992. Two (2) sessions.
November 11, 1992. One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants/Counterrespondents Mark Schneider, Frank DiMaria, and Rosenthal Collins Group ("Claimants") alleged breach of contract, failure to disclose information, termination of arbitrage trading without cause, and breach of fiduciary duty by Respondent/Counterclaimant Shearson Lehman Brothers, Inc. ("Respondent"). The allegations arose out of the closing of Claimants' Account with Respondent and terminating their arbitrage trading in Euro-yen contracts. Claimants stated that after closing their account, Respondent had sent them a check for \$100,000.00 representing their remaining equity. Claimants went on to allege that, in February of 1992, Respondent had contacted them and had claimed that instead a credit of \$100,000.00, there had been a debit of over \$174,000.00. Claimants also alleged that they had requested an accounting and that Respondent had failed to respond to the request.

In its Statement of Answer Shearson denied liability alleged in the Statement of Claim. In addition, Respondent had also asserted a Counterclaim to collect the alleged debit balance in Claimants' account in the amount of \$178,266.37.

For their response to Respondent's Counterclaim, Claimants stated that they had been willing to discuss the resolution of the "situation" as soon as they had received the accounting from the Respondent. Claimants further stated that Respondent had not provided them with the requested accounting. Claimants further denied the allegations and statements set forth in Respondents Counterclaim. In addition, Claimants set forth the following defenses: Claimants did not know of the keypunch error; there were errors in Respondent's favor that masked the keypunch error and offset it; and the law requires Respondent to notify Claimants of its mistake within a reasonable time and before they change their position.

In its Amendment to the Counterclaim, Respondent reduced its request for an award on Claimants' alleged joint and several indebtedness in the amount of \$9,210.38, resulting in a revised award demand of \$169,055.99.

RELIEF REQUESTED

Claimants requested the Respondent be compelled to produce all of its records regarding the transactions and trades in the Account, including its daily trade register; that Respondent be ordered to pay to Schneider and DiMaria such sums as shall be found due and owing upon the accounting; and that Respondent be ordered to pay the costs, including attorneys' fees that Claimants have incurred in bringing this arbitration; and that Respondent be ordered to pay such other sums as is deemed proper.

Respondent requested that the panel Award it \$169,055.99, all of its miscellaneous expenses, costs, interest and reasonable attorneys' fees incurred in connection with responding to the allegations of the Statement of claim and prosecuting its counterclaim.

Claimants further requested that Respondent's counterclaim be dismissed, or in the alternative, Claimants requested that they be granted relief on their claim for an accounting. The panel was requested to order Respondent to provide adequate documentation to verify the ending balance at Respondent's expense. Claimants additionally requested that if the accounting showed claimants owed money to Respondent, the total should be reduced by \$55,000.00, the amounts Claimants paid to David Mosseau in reliance on Respondent's computations and an additional \$87,000.00 for credits not given by Shearson...

OTHER ISSUES CONSIDERED & DECIDED

On November 10, 1992, Respondent made a Motion to Realign the Parties and to Amend the Caption. The Motion arose out of the fact that Claimants acknowledged receipt of all items requested in their claim. After hearing from both parties, and also acknowledging the fact that Claimants had dropped their claim against Respondent, the panel granted Respondent's motion. Respondent was allowed to give the first opening argument. However, Claimants were allowed to proceed with their scheduled witnesses prior to Respondent putting on its case in chief.

The parties have agreed that the Award in this matter may be executed by 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 NASD.

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. Counterrespondents Mark Schneider and Frank DiMaria are liable for, and shall pay to the Counterclaimant, Shearson Lehman Brothers, Inc., the sum of \$169,055.99 as satisfaction for all of Counterclaimant's claims herein.

2. Counterclaimant's requests for attorneys' fees and prejudgment interest are hereby denied and dismissed with prejudice.

3. Each party shall pay their own costs and attorneys' fees incurred in this arbitration, except as set forth more fully below.

FORUM FEES

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing sessions X \$750.00 = \$2,250.00

Pursuant to Section 44(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250, and shall retain the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant/Counterrespondent.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Respondent/Counterclaimant.

Additional forum fees in the amount of \$525.00 are assessed jointly and severally against Counterrespondents Mark Schneider and Frank DiMaria.

Additional forum fees in the amount of \$375.00 are assessed against Counterclaimant.

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

CONCURRING ARBITRATORS

Dated:

November 20, 1992

/s/William M. Getzoff
William M. Getzoff
Presiding Chair
Public Arbitrator

December 02, 1992

/s/Stuart M. Widman
Stuart M. Widman
Public Arbitrator

November 24, 1992

/s/John R. Scott
John R. Scott
Industry Arbitrator

Date of Service by the NASD:

December 4, 1992