

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jon A. Geiss

92-01560

Name of Respondents

Shearson Lehman Hutton, Inc.
John Noonan

REPRESENTATION

For Claimant at the hearing: Terry J. Fleming, Esq. of Lindquist & Vennum, Minneapolis, Minnesota.

For Respondent Shearson Lehman Hutton, Inc. at the hearing: Jeffrey L. Friedman, Esq. of Shearson Lehman Hutton, Inc., New York, New York. For Respondent John Noonan at the hearing: Thomas J. Shroyer, Esq. of Moss & Barnett, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: May 7, 1992. Amended Statement of Claim filed: October 26, 1992. Claimant's Submission Agreement signed on: May 4, 1992.

Joint Statement of Answer filed by Respondents, Shearson Lehman Hutton, Inc. and John Noonan, on: July 13, 1992. Respondent Shearson Lehman Hutton, Inc.'s response to the Amended Statement of Claim filed on or about: December 18, 1992. Respondent John Noonan's response to the Amended Statement of Claim filed on: December 24, 1992. Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed on: July 10, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: January 13, 1993 for one (1) session;
January 14, 1993 for two (2) sessions;
February 2, 1993 for two (2) sessions;
February 3, 1993 for two (2) sessions;
February 4, 1993 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Jon Geiss ("Geiss") alleged that Respondent Shearson Lehman Hutton, Inc. ("Shearson"), through its agent, Respondent John Noonan ("Noonan") engaged in material misrepresentations and omissions in connection with the sale of securities. More specifically, Geiss alleged that Noonan recommended that Geiss buy Sci-Med Life Systems stock. Geiss alleged that he bought the stock but the price continued to drop and he lost more than \$130,000.00 before the stock could be sold. Geiss alleged that Noonan recommended IBM Warrants, representing that the warrants had equity features, and would increase on a "dollar for dollar" basis with the stock. Geiss alleged that he bought \$380,000.00 of the IBM Warrants after selling 25,000 shares of Black & Decker stock. Geiss alleged that Noonan made material misrepresentations, and failed to disclose particular information regarding the IBM Warrants. Geiss alleged that he had purchased IBM options, not IBM Warrants, and that he had been misled. Geiss further alleged that he explained to Noonan earlier in their relationship that he was not a speculator, that he did not buy on margin, and that he thought options were too risky and did not want to trade options.

Geiss, in his Amended Statement of Claim, alleged that Shearson and Noonan wilfully fabricated evidence in this proceeding. Geiss alleged that a letter from Mr. Noonan to Mr. Geiss, dated September 18, 1991, had been fabricated, and also a pamphlet issued by the CBOE relating to LEAPS with a handwritten notation on the cover page indicating that it allegedly was "sent 9/18/92." As a result, Geiss amended his claim to add a request for punitive damages.

Respondents Shearson and Noonan, in their joint Statement of Answer, denied the allegations set forth in the Statement of Claim. Shearson and Noonan alleged that it was Geiss who instructed Noonan to buy Sci-Med. Noonan alleged that he had no opinion on the stock and he counselled against purchasing the stock after it had significantly declined. Shearson and Noonan also alleged that Geiss did not mention any of the transactions which benefitted him. Shearson and Noonan further alleged that the purchase of the IBM Leaps were authorized by Geiss only after he became familiar with LEAPS, completely understood that this was a purchase of long-term call options, and thoroughly discussed this transaction with Noonan.

Shearson, in their response to the Amended Statement of Claim, alleged that after conducting a thorough and exhaustive investigation into the authenticity of the "fabricated" letter at issue, determined that the letter was indeed fabricated by Noonan. Shearson further alleged that as a result of this fact, they have terminated Noonan's employment and have withdrawn as counsel for Noonan. Shearson also alleged that the fact that Noonan fabricated the letter, should not materially affect the merits of this case from Shearson's perspective.

Noonan, in his response to the Amended Statement of Claim, alleged that he did re-create the letter about the IBM Leaps. Noonan further alleged that the fact that he re-created this letter should not materially affect the merits of this case.

RELIEF REQUESTED

Claimant requested rescission of his purchase of the IBM LEAPS in the amount of \$382,161.10 upon tender of those securities to Shearson, interest from October 8, 1991, and attorney's fees pursuant to Minn. Stat. Section 80A.23. In his Amended Statement of Claim, Claimant requested, in addition to his original request, that he be awarded costs and punitive damages in the amount of \$382,161.10 under Minn. Stat. Section 549.20.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that all costs associated with this proceeding be assessed against Geiss.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Respondent John Noonan did not file with the NASD a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Section 12 of the Code, and having answered the claim, appeared and testified at the hearing, is bound by the determination of the panel on all issues submitted.

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. The Claimant's request for the return of his \$382,161.10 investment is denied;
2. Respondent John Noonan shall be and hereby is liable for, and shall pay to the Claimant, Jon Geiss, attorneys' fees in the sum of Fifteen Thousand Dollars (\$15,000.00) for damages to Jon Geiss as a direct result of John Noonan's fabrication of evidence. The panel awards attorneys' fees under the authority of Minn. Stat. Section 80A.23;
3. Respondent John Noonan shall be and hereby is liable for, and shall pay to the Respondent, Shearson Lehman Brothers, Inc., attorneys' fees in the sum of Fifteen Thousand Dollars (\$15,000.00) for damages to Shearson Lehman Brothers, Inc., as a direct result of John Noonan's fabrication of evidence. The panel awards attorneys' fees under the authority of Minn. Stat. Section 80A.23;
4. Claimant's request for interest is denied;

5. Claimant's request for punitive damages is denied;

6. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

FORUM FEES

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

8 sessions X \$750 = \$6,000 minus hearing session deposit of \$750 = net \$5,250 due.

Additional Forum fees are assessed by the Panel against Claimant, Jon Geiss, in the sum of \$2,250 and against Respondents, Shearson Lehman and John Noonan, jointly and severally, in the sum of \$3000.

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

By The Arbitration Panel:

Dated:

James A. Lundberg, Esq.
Presiding, Public Arbitrator

Wendy A. Sacha
Wendy A. Sacha
Public Arbitrator

4/13/93

Emily B. Boote
Industry Arbitrator

Date Award Served By The NASD: _____

5. Claimant's request for punitive damages is denied;

6. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

FORUM FEES

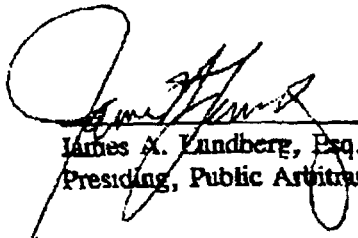
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By The Arbitration Panel:


James A. Lundberg, Esq.
Presiding, Public Arbitrator

Dated:

4-26-1993

Wendy A. Sacha
Public Arbitrator

Emily B. Boote
Industry Arbitrator

Date Award Served By The NASD: _____

5. Claimant's request for punitive damages is denied;
6. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

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By The Arbitration Panel:

Dated:

James A. Lundberg, Esq.
Presiding, Public Arbitrator

Wendy A. Sacha
Public Arbitrator

Emily B. Boote
Emily B. Boote
Industry Arbitrator

7-15-92

Date Award Served By The NASD: _____