

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Joseph H. Lock

92-01595

Name of Respondents

Shearson Lehman Brothers, Inc.  
James Toto

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**REPRESENTATION**

For Claimant Joseph H. Lock ("Claimant"): Walter D'Ull, Esq., a sole practitioner.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and James Toto ("Toto"): Robert S. Moraff, Esq. of Schwartz Tobia et al.

**CASE INFORMATION**

Statement of Claim filed: May 11, 1992.

Claimant's Submission Agreement signed on: May 4, 1992.

Joint Statement of Answer filed by Respondents on: September 10, 1992.

Respondent Shearson's Submission Agreement signed on: August 7, 1992.

Respondent Toto's Submission Agreement signed on: October 2, 1992.

**HEARING INFORMATION**

Hearing Dates/Sessions: June 23, 1993/2 sessions  
July 27, 1993/2 sessions

Hearing Location: NASD, New York, NY

**CASE SUMMARY**

Claimant alleged he consulted with Toto to open an Individual Retirement

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Account ("IRA") in 1986 which represented his principal retirement account. Claimant alleged he was 54 years old; had lost his job in a corporate takeover; was unemployed over six months; was married with four children; had a mortgage and over 10 years of college tuition to pay. Claimant alleged his investment objectives were preservation of capital foremost and then capital appreciation and that Toto agreed with and would follow them. Claimant alleged the securities recommended and purchased by Toto were not in accordance with his investor profile or objectives. Claimant alleged Toto represented he would invest in companies which had strong track records in earnings, sales growth, successful product lines, excellent management and accessibility. However, Claimant maintained the representations were false and that he relied on them to his detriment.

Further, Claimant alleged Toto made unauthorized transactions in Walker Telecommunications Corporation among others; recommended unsuitable investments; and made an unjustified claim of possession of insider knowledge and a close relationship with top management of the companies he recommended.

Claimant also alleged Shearson made a market in all the securities Toto recommended; that Toto never told him Shearson was the market maker in the securities; never advised him his stocks were sold from the Shearson portfolio; and therefore, Toto disregarded his fiduciary responsibility. Claimant further alleged Shearson did not supervise Toto's actions.

Respondents alleged Claimant did not indicate preservation of capital was his goal and was cognizant to the risks associated with investing in the companies recommended by Toto. Respondents maintained Claimant did not indicate to Toto that any portion of these funds were earmarked for tuition or to otherwise provide support to himself and his family. Toto asserted he was aware Claimant was seeking other employment but was also advised by Claimant that he had obtained severance pay.

Toto maintained he never represented to Claimant there was a fixed criteria which he would use in recommending a particular growth stock to a client; and never expressly or impliedly suggested he had any "inside" information or access to such from corporate officers. Toto contended he never expressly or impliedly suggested that his pursuit of corporate representatives would enable him to prevent Claimant from sustaining losses.

Respondents asserted that if the transactions were unauthorized, as Claimant alleged, then Claimant could not have authorized the transactions in reliance upon

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the alleged misrepresentations. Respondents maintained Toto did not buy stock in Claimant's account without prior authorization; he recommended suitable investments; and did not misstate any fact concerning financial or other business affairs of the companies which he recommended to Claimant. Finally, Respondents asserted that Claimant's RICO claim was time barred.

#### **RELIEF REQUESTED**

Claimant requested: actual damages in the amount of \$60,746.00; interest in the amount of \$25,361.00; dividend income; attorneys' fees in the amount of \$30,000.00 and RICO damages in the amount of \$182,238.00.

Respondents requested: Claimant's claims be dismissed with prejudice; and costs.

#### **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.

#### **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 claims against Respondents are hereby dismissed;
2. Claimant's RICO claim against Respondents is hereby dismissed;
3. All other claims are dismissed;
4. Each party shall bear its own costs, including attorneys' fees.

#### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

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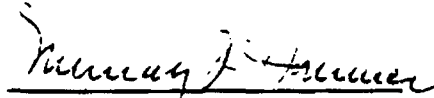
4 sessions X \$750.00. = \$3,000.00 minus hearing session deposit of \$750.00 =  
net \$2,250.00 due.

Forum fees Assessed Against:

1. Claimant is hereby liable and shall pay to the NASD the sum of  
\$\$3,000.00 minus the \$750.00 hearing session deposit retained the by  
NASD equals \$2,250.00 due and owing to the NASD.

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

Arbitrator Signature



Murray I. Sommer/Public Arbitrator

Date of Decision: August 16, 1993

STATE OF

COUNTY OF

On this 7 day of August, 1993, before me personally appeared Murray I. Sommer known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.

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**KEVIN L. COOK**  
JUDICIAL OFFICIAL, STATE OF NEW YORK  
NO. 02C04638105  
QUALIFIED IN WESTCHESTER COUNTY  
MY COMMISSION EXPIRES NOV. 30, 1993

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

Arbitrator Signature

  
\_\_\_\_\_  
Neil J. Carey/Public Arbitrator

Date of Decision: August 16, 1993

STATE OF *Connecticut*

COUNTY OF *FAIRFIELD*

On this *9<sup>th</sup>* day of *August*, 1993, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.

*Olga L. Da Silva*

OLGA L. DA SILVA  
My Commission Expires *6/30/94*

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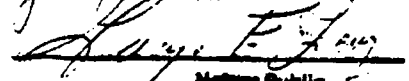
Arbitrator Signature

  
John W. Engelskirger/Industry Arbitrator

Date of Decision: August 16, 1993

subscribed and Sworn to before me, a Notary  
Public, in and for County of Tarrant TX ss:  
and State of Connecticut, this 12<sup>th</sup> day of

August, 1993

  
Notary Public

Commission expires 3/31/94

STATE OF *Connecticut*  
COUNTY OF *Fairfield*

On this 10<sup>th</sup> day of *August*, 1993, before me personally appeared John W. Engelskirger known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that ~~she~~ he executed the same.

*Larry F. Lee N.R.*  
*Commission expires 3/31/94*