

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Shearson Lehman Brothers, Inc.

92-01633

Name of Respondents/Counter-Claimant

Joseph Mayer;  
Sandra Mayer

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**REPRESENTATION**

For Claimant/Counter-Respondent: Shearson Lehman Brothers, Inc. was represented by Jerry M. Santangelo, Esq. of Neal, Gerber & Eisenberg, located in Chicago, Illinois.

For Respondents/Counter-Claimant: Joseph Mayer and Sandra Mayer were represented by James B. Renz, Esq. and Linda A. Liebert-Hall, Esq. of Renz & Liebert-Hall, P.C., located in Clayton, Missouri.

**CASE INFORMATION**

Statement of Claim filed: May 13, 1992.

Claimant/Counter-Respondent's Submission Agreement signed on: May 8, 1992 by James S. Kenton, Vice President and Associate General Counsel, Shearson Lehman Brothers, Inc.

Joint Statement of Answer/Counterclaim filed by Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer on: May 13, 1992.  
Respondent Joseph Mayer's and Respondent/Counter-Claimant Sandra Mayer's Submission Agreement signed on: May 16, 1992.

Reply to Counterclaim filed by Claimant/Counter-Respondent Shearson Lehman Brothers, Inc.  
on: May 13, 1992.

Stipulation to Dismiss previous actions and file with the NASD filed by Claimant/Counter-Respondent Shearson Lehman Brothers, Inc., Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer on: May 23, 1991.

### HEARING INFORMATION

Pre-Hearing Conference: None Held.  
Hearing Dates/Sessions: February 23, 1993 for Two (2) sessions;  
February 24, 1993 for Two (2) sessions.  
  
Hearing Location: St. Louis, Missouri.

### CASE SUMMARY

Claimant Shearson Lehman Brothers, Inc. ("Shearson") alleged that Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer owed to Shearson the amount of a debit balance in their Shearson account because of losses incurred in connection with the liquidation of short index options during and within several days of the market crash of October 19, 1987.

Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer denied owing the sums claimed by Shearson, alleging that:

1. Joseph Mayer was improperly joined as a party to this arbitration because he was not a party to the Customer Agreement between Shearson and Sandra Mayer for Account 474-05522-1-3-140 in which the debit balance occurred and never voluntarily consented to enter into arbitration with Shearson in its dispute with Sandra Mayer;
2. Any other account agreements entered into by Shearson and Joseph Mayer do not bind him to arbitrate the controversy surrounding the account in issue and any input by Joseph Mayer regarding the handling of the account was provided only in an advisory capacity to or on behalf of Sandra Mayer;
3. The arbitration clause contained in Sandra Mayer's customer agreement failed to comply with Missouri law and is unenforceable;

4. Any losses alleged were caused in whole or in part by Shearson's own negligence in the handling of the account, in that:

- a. Shearson negligently established margin requirements inadequate to cover the high risk of the index option strategy employed in Sandra Mayer's account;
- b. Shearson negligently engaged in high risk trading in Sandra Mayer's account without first obtaining Sandra Mayer's consent;
- c. Shearson negligently sold zero-coupon tax free bonds in Sandra Mayer's account after the Mayers specifically requested that Shearson refrain from selling said bonds;
- d. Shearson negligently failed to heed the warnings of its own advisors and analysts who foretold the likelihood of the impending stock market crash of October 1987 at least a week before the crash occurred.

Sandra Mayer asserted a counterclaim alleging that Shearson breached its duty to exercise reasonable care in the handling and maintenance of her account by:

1. Negligently failing to advise Sandra Mayer that it intended to engage in high risk trading in her account and then engaging in such trading without her consent;
2. Negligently misrepresented its index option strategy as a basically conservative strategy when it knew or should have known that the strategy involved high risk;
3. Negligently establishing margin requirements inadequate to cover the high risk of the index option strategy employed in Sandra Mayer's account;
4. Negligently selling zero-coupon tax-free bonds in Sandra Mayer's account after the Mayers specifically requested that Shearson refrain from selling the bonds;
5. Negligently advertising to Sandra Mayer that Standard and Poor 100 Index Options were traded in a liquid and continuous market, when in fact the market was shut down for large parts of October 19 and 20, 1987; and
6. Negligently failing to advise Sandra Mayer about the likelihood of an impending stock market crash when Shearson's own advisors and analysts predicted and foresaw the crash at least one week before it occurred.

Shearson denied the allegations of the Counterclaim, alleging that:

1. The Counterclaim was time-barred under the applicable statute of limitations;
2. While Sandra Mayer's understanding of index options strategies may have been less than complete, her husband was a seasoned investor and speculator who directed all the trading in the account, and all his knowledge and sophistication was imputed to her;
3. The Customer Agreement executed by Sandra Mayer confirmed Shearson's unconditional right to sell the zero coupon bonds in order to partially satisfy its unsecured debit balance;
4. Even though a Shearson analyst publicly expressed the opinion that the market was susceptible to a major down-side break, this does not create a cause of action because Shearson had no duty to communicate this opinion, and even if communicated, it would require pure speculation to find that the Respondents would have taken any action in reliance on it; and
5. In a letter to Shearson after the crash, Joseph Mayer made an unambiguous admission of liability.

#### **RELIEF REQUESTED**

Claimant/Counter-Respondent Shearson requested that the Panel enter an award against the Mayers for the unsecured debit balance in the amount of \$83,100.83, together with interest thereon at such reasonable rate as would fully and fairly compensate Shearson for its losses incurred.

Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer requested that the Statement of Claim be dismissed and denied in its entirety. In addition, Respondent/Counter-Claimant Sandra Mayer requested an award against Shearson for the sum of \$192,000.00 in actual damages, \$500,000.00 in punitive damages, attorneys' fees, costs, and any other relief the panel deemed just and proper.

Claimant/Counter-Respondent Shearson requested that the Counterclaim be dismissed and denied in its entirety.

**OTHER ISSUES CONSIDERED & DECIDED**

This action was compelled to arbitration by order of court on September 24, 1991. By stipulation executed by the parties, prior actions filed by the parties were dismissed and the parties agreed to submit the pleadings previously filed with the New York Stock Exchange to the National Association of Securities Dealers, Inc.

The Panel specifically finds that Respondent Joseph Mayer is a proper party to this arbitration and that the Panel and the NASD has subject matter jurisdiction over the dispute Shearson has with Joseph Mayer. The panel denied the request that Respondent Joseph Mayer be dismissed from this arbitration proceeding.

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. Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer are jointly and severally liable for and shall pay to Claimant/Counter-Respondent Shearson Lehman Brothers, Inc. the sum of \$83,100.00;
2. The counterclaim asserted by Respondent/Counter-Claimant Sandra Mayer is dismissed and denied in its entirety; and
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

**OTHER COSTS**

The NASD shall retain the \$600.00 adjournment fee previously paid by Claimant/Counter-Respondent Shearson Lehman Brothers, Inc.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) Hearing sessions x \$1,000.00 per hearing session = \$4,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimant/Counter-Respondent Shearson Lehman Brothers, Inc. Claimant/Counter-Respondent Shearson Lehman Brothers, Inc. is liable for and shall pay to the NASD additional forum fees in the sum of \$1,400.00. The NASD shall retain the \$250.00 claim filing fee and the \$1,250.00 hearing session deposit previously deposited by Respondent/Counter-Claimant Sandra Mayer. In addition, Respondent Joseph Mayer and Respondent/Counter-Claimant Sandra Mayer are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$750.00.

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

Concurring Arbitrators' Signatures

Name

Date

Thomas A. Cipolla, Esq.  
Thomas A. Cipolla, Esq.  
Public Arbitrator  
Chairperson

April 26, 1993

William A. Moffitt, Jr., Esq.  
William A. Moffitt, Jr., Esq.  
Public Arbitrator

April 26, 1993

Dale W. Roth  
Dale W. Roth  
Industry Arbitrator

April 29, 1993

Date of Decision: \_\_\_\_\_