

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Matthew and Susan Brennan

92-01654

Name of Respondents

Shearson Lehman Brothers, Inc.
Theresa Thompson
Robert Fox

REPRESENTATION

Claimants Matthew and Susan Brennan appeared at the hearing without counsel.

For Respondents, Shearson Lehman Brothers, Inc. ("SLB"), Theresa Thompson ("Thompson") and Robert Fox ("Fox"), Paul Williams, Esq. from the law firm of Schupbach, Williams & Pavone.

CASE INFORMATION

Statement of Claim was filed on May 14, 1992.

Claimant's Submission Agreement was signed on May 13, 1992.

Respondents' Joint Statement of Answer was filed on October 19, 1992.

SLB's Submission Agreement was signed on October 17, 1992.

Thompson's Submission Agreement was signed on October 17, 1992.

Fox's Submission Agreement was signed on October 17, 1992.

HEARING INFORMATION

Hearing Date/Sessions: February 9, 1993 - 2 sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York, NY.

CASE SUMMARY

Claimants allege that Respondents breached their fiduciary duty by misrepresenting investments made for Susan Brennan's account and violating her explicit investment instructions. Claimants further allege that Respondents failed to properly research the company, Silicon Valley Group, Inc. ("SVGI"), which Claimants ultimately invested in based on Respondents' advice. Claimants allege that Respondents misrepresented the nature of SVGI common stock by informing Claimants that SVGI was a safe investment with little chance of principal loss, when in fact SVGI was volatile and risky. Claimants contend that Respondents failed to properly evaluate Claimants' financial position and consequently overstated Claimants' net worth. Claimants maintain that Respondents increased the risk of their investment by not diversifying their portfolio.

Respondents maintain that Thompson discussed Susan Brennan's financial background and investment objectives with her at which time she indicated that she was seeking growth-oriented investments. Respondents further maintained that Claimants indicated that they were willing to tolerate some risk to achieve growth. Respondents maintain that for each of the four trades made for Claimants, Thompson discussed the benefits and risks of each with Susan Brennan. Respondents maintain that each trade was executed with the specific prior approval of the Claimants.

RELIEF REQUESTED

Claimants request that SLB be required to buy back the SVGI stock at the price paid, pay interest on the amount originally invested for the period June 11, 1990 to the date of settlement of this claim at a rate equal to that earned on safe investments (i.e. interest rate on 30 year U.S. Treasury bonds) and reimburse Claimants for the cost of filing for arbitration. The above amounts to approximately \$8,220.00 in total compensation.

Respondents request that Claimants' claim be denied in its entirety, that Respondents be awarded costs, disbursements and attorneys' fees incurred in connection with this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD. Respondents made a motion to dismiss all claims against Robert Fox, a member of SLB's Compliance Division who investigated the Claimants' complaints and determined that nothing improper had occurred. The Claimants did not object to the motion and

the motion was granted.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrator finds that Respondent Terry Thompson as broker for Susan Brennan did purchase securities for Susan Brennan's account which were inconsistent in nature with prior purchases in the account. Susan Brennan was relying on Terry Thompson to make recommendations of suitable securities and the securities so recommended which Susan Brennan subsequently purchased were not suitable for Susan Brennan's account. One of the unsuitable securities, namely Telebit Corp., made money and one of the securities, namely Silicon Valley Group, lost money.
2. In assessing damages in this matter, the arbitrator believes that the results of these purchases must, under the facts of this case, be offset against one another. Further, in assessing damages, the arbitrator believes that Shearson Lehman and Terry Thompson cannot, under the facts of this case, be held responsible for the lowest price to which the unsuitable security, Silicon Valley Group, Inc. subsequently declined but rather the more appropriate measure of damages would be to use the value of the security at the time the account was transferred out of Shearson Lehman Brothers, Inc. Consequently, the arbitrator has deducted from the purchase price of \$12,314.00 the account ending value of \$8,750.00 and arrived at a gross loss of \$3,564.00. Also deducted from this gross loss is the profit made on the unsuitable Telebit stock namely \$1,121.00 leaving the net amount payable to Susan Brennan of \$2,443.00.
3. A major factor influencing the arbitrator's decision in this case was that it appeared that Terry Thompson, while genuinely concerned with serving the needs of Susan Brennan, appeared to have forgotten the earlier articulated investment objectives of Susan Brennan when making the Telebit and Silicon Valley Group, Inc. recommendations. In addition, even considering the passage of time, Respondent Terry Thompson did not seem to be familiar with the investment merits and demerits of the securities recommended and appeared to have relied primarily if not solely upon the investment recommendation of Shearson Lehman Brothers, Inc. It is the view of the arbitrator that this conduct on the part of Ms. Thompson was inconsistent with a broker's obligation to be aware of a customer's objectives and to recommend only securities which are consistent with those objectives.
4. The costs of this proceeding are split 50-50 between Claimants and Respondents, with

Respondents' share to be paid jointly and severally by Respondents. The reason for assessing costs in this manner is that the arbitrator believes that the actions of the Brennans themselves were an important factor in the decline of the relationship between Susan Brennan and Terry Thompson.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are equally assessed against Claimants and Respondents.

Non-refundable Filing Fee: \$75.00

Hearing Session Fees: \$200.00 X 2 sessions = \$400.00

1. Claimants are assessed \$237.50. Claimants paid \$275.00. and is entitled to a refund of \$37.50.
2. Respondents are to pay the NASD the sum of \$200.00 and reimburse Claimants \$37.50.

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

CONCURRING ARBITRATOR SIGNATURE



Robert Seaman, Esq.

Public Arbitrator

Date of Decision: July 19, 1993

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STATE OF

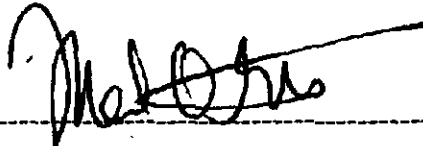
NY

S.S.:

COUNTY OF

NY

On this 19 day of July, 1993, before me personally appeared Robert Seaman, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he/she executed the same



MARK O. GLUT
Notary Public, State of New York
No. 4088183
Qualified in Queens County
Expires April 20, 1994