

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Marjorie Virginia Crump

and

92-01689

Name of Respondents

Shearson Lehman Brothers, Inc.
Samuel D. Simpson

REPRESENTATION OF PARTIES

Marjorie Virginia Crump ("*Claimant*") was represented by Artie G. Giotes, Esq. of Pakis, Giotes, Beard & Page, Waco, Texas.

Shearson Lehman Brothers, Inc. and Samuel D. Simpson ("*Respondents*") were represented by Rodolfo Rodriguez, Jr., Esq. of Locke Purnell Rain Harrell, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about May 20, 1992. First Amended Statement of Claim filed on or about September 28, 1992. Submission Agreement of Claimant was signed on May 15, 1992.

Respondents' Answer to Statement of Claim was filed on or about July 13, 1992. Respondents' First Amended Answer to Statement of Claim was filed by Respondents on or about October 27, 1992. Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was signed by William A. Hohauser and was undated and not notarized. Submission Agreement of Respondent Samuel D. Simpson was signed on July 8, 1992.

HEARING INFORMATION

The hearing was held on Monday, June 28, 1993 for two (2) sessions and Tuesday, June 29, 1993 for two (2) sessions in Dallas, Texas for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Simpson made certain representations to the Claimant about the characteristics and propriety of investing in Aetna Real Estate Associates, L.P. ("AREA") and failed to disclose material facts. It was also alleged that this investment was not suitable for the Claimant in light of her financial circumstances, age, health, and general circumstances. Claimant further alleged that Simpson took advantage of the Claimant's inexperience in investing, her trust and confidence in him, and breached his fiduciary relationship with the Claimant.

Respondents denied the allegations of the Claimant. Respondents stated that the Claimants were informed about the nature and outcome of the investment throughout the time their account was at Shearson; that Simpson was always accessible to the Claimant and answered every question the Claimant and her husband had throughout their professional relationship; and that the Claimant decided to invest in AREA after numerous discussions over a number of weeks and with the full knowledge of the nature and risks of the investment. It was further stated that the investment was suitable for the Claimant and that Simpson did not make any misrepresentations to the Claimant. The following affirmative defenses were asserted: the Claimant is barred from recovery under the doctrines of waiver, ratification and estoppel; the claims are barred in whole or in part by the claimants contributory fault; arbitration panels do not have the power to award punitive damages in arbitration cases that are governed by New York law; and the claimant failed to mitigate damages.

RELIEF REQUESTED

Claimant requested that the transaction be rescinded and that her account be restored with \$67,990.16, the purchase price of this investment, together with a yield of 8.5% from the date of the investment on June 5, 1989, less such income from the investment that her IRA may have actually received. In addition, the claimant requested that she be awarded exemplary damages in an amount proper under the circumstances and her costs and attorneys' fees.

Respondents requested that the claims be denied in all respects.

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 original(s) remain on file with the N.A.S.D..

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution

of the issues submitted for determination as follows:

1. While the undersigned arbitrators are sympathetic to the Claimant's losses, if any, they find no liability on the part of Respondents Shearson Lehman Brothers, Inc. and Samuel D. Simpson.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the N.A.S.D. by the Claimant and Claimant shall pay the sum of \$500.00 as additional forum fees. Respondents shall pay to the N.A.S.D. the sum of \$750.00 as additional forum fees.

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any.

The N.A.S.D. shall retain postponement fees in the amount of \$500.00 previously deposited with the N.A.S.D. by the Claimant and the postponement fee of \$500.00 previously deposited by the Respondent Shearson Lehman Brothers, Inc. Shearson Lehman Brothers, Inc. had previously deposited the sum of \$750.00 of which \$500.00 is being retained and \$250.00 is being applied to forum fees above. *Fees are payable to the National Association of Securities Dealers, Inc.*

Dated:

s/ Arthur H. Geffen, Esq.

Arthur H. Geffen, Esq.

Public Arbitrator, Presiding Chair

July 21, 1993

s/ Harold L. Sutherland

Harold L. Sutherland

Public Arbitrator

July 22, 1993

s/ G. Dale McKissick

G. Dale McKissick

Industry Arbitrator

July 21, 1993