

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Berenice Piepgrass

92-01691

Name of Respondents

Shearson Lehman Brothers, Inc.;
Patrick Cass

REPRESENTATION

For Claimant: Berenice Piepgrass was represented by David K. Foster, Esq. of Johnson & Christopher, Inc., located in San Antonio, Texas.

For Respondent: Shearson Lehman Brothers, Inc. and Patrick Cass was represented by Barry A. McClenahan, Esq. of Pape, Murray, McClenahan & Sparr, Inc., located in San Antonio, Texas.

CASE INFORMATION

Statement of Claim filed: May 20, 1992.

Claimant's Submission Agreement signed on: April 30, 1992.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Patrick Cass on: July 22, 1992.

Respondent Shearson Lehman Brother, Inc.'s Submission Agreement signed on: June 18, 1992 by Rick Apicella, Vice President and Associate General Counsel, Shearson Lehman Brothers, Inc.

Respondent Patrick Cass' Submission Agreement signed on: July 6, 1992.

HEARING INFORMATION

Pre-Hearing Conference: January 6, 1993 before one arbitrator.
Hearing Date/Sessions: February 16, 1993 for Three (3) sessions.
Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Berenice Piepgrass ("Piepgrass") alleged that Respondent Patrick Cass ("Cass"), while employed by or acting as an agent for Respondent Shearson Lehman Brothers, Inc. ("Shearson"), fraudulently induced her to purchase investments which were unsuitable given her investment objectives. Piepgrass specifically alleged that:

1. In September of 1989, Piepgrass was contacted by Cass who advised her that her existing investments in the Prudential-Bache National Municipal Fund and the Putnam GNMA Plus Fund were unsuitable for her needs;
2. Based on his advice, Piepgrass redeemed both her investments. Cass then invested \$126,000 of the sale proceeds into Franklin Tax Free Insurance Funds which, unlike the Prudential Fund, carried a 4% sales charge and whose dividends could only be invested at the offering price;
3. In October of 1989, Cass purchased 45 units of Municipal Investment Trust Fund Securities without informing her about the funds' built-in 4-1/2% sales charge and ninety day lag time in interest payments. Cass further indicated that he would convert Piepgrass' redeemed Putnam Funds into Putnam tax-free funds which would generate no sales commissions for Shearson or Cass. Instead, on October 11, 1989, Cass invested \$51,094.66 into Collin County (Texas) jail bonds maturing on March 1, 1998 at par value, generating a loss of capital inappropriate for Piepgrass' needs;
4. In addition, between October, 1989 and February, 1990, Cass purchased an additional 790 shares of the Franklin Tax-Free Insurance Fund securities;
5. The redemption of Piepgrass' existing securities and the ensuing purchases took unfair advantage of her age and investment knowledge, and were induced solely for the purpose of generating sales commissions for Cass and Shearson.

Respondents Shearson and Cass denied the material allegations of the Statement of Claim, alleging that:

1. The original contact with Piepgrass was not the result of solicitation or telephone contact, but occurred when Piepgrass' daughter brought her to the office because Piepgrass had become uncomfortable and distrustful of the investments she was put in by her son;
2. Cass agreed to review her portfolio and make recommendations on reducing risk and taxes. On September 8, 1989, Cass presented his proposal to Piepgrass and she agreed with all items except one. Cass explained the consequences of the sale of her prior investments and fully detailed the costs involving the reinvestment of the proceeds. A liquidation letter was executed by Piepgrass and forwarded to Prudential;
3. The investments were executed as funds became available through the liquidation. Cass would contact Piepgrass prior to a transaction to insure she was comfortable with the proposed investment or shortly after the transaction was completed if Cass was comfortable with Piepgrass' decision;
4. Cass met with Piepgrass on an approximate monthly basis to review her statement and to update her on the progress of the portfolio. Piepgrass was fully aware and consented to all actions taken in her account;
5. The additional transactions which occurred in the Franklin Insured Tax-Free Fund were automatic reinvestment of dividends; and
6. The Collin County jail bonds were purchased with the consent of Piepgrass.

RELIEF REQUESTED

Claimant Piepgrass requested that the panel enter an award in her favor in the amount of \$57,648.81; damages in an amount of two times the amount of actual damages of \$1,000.00 or less and in an amount of three times the amount of actual damages that exceed \$1,000.00 pursuant to the Texas Business & Commerce Code Ann., Section 17.41, et seq., the "Deceptive Trade Practices Act"; in the alternative, exemplary damages as a result of the fraud and/or gross negligence on the part of Respondents pursuant to the Texas Civil Practice & Remedies Code Section 41.01, et seq.; attorneys' fees pursuant to the Deceptive Trade Practices Act; interests on the damages; and the costs and expenses of this proceeding.

Respondents Shearson and Cass requested that the Statement of Claim be found to be without merit and a ruling entered in favor of the Respondents; that all costs be assessed against Piepgrass; and for such other relief to which Respondents were entitled.

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.

On February 12, 1993, Claimant filed a Motion for Leave to File an Amended Statement of Claim. At hearing, argument was heard on the Motion. After review, the Panel determined that the Motion would be denied.

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 Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing before an arbitrator x \$300.00 = \$300.00; Three (3) hearing sessions x \$500.00 per hearing session = \$1,500.00; Total Forum Fees = \$1,800.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimant, Berenice Piepgrass. In addition, Claimant Berenice Piepgrass is liable for and shall pay to the NASD additional forum fees in the sum of \$1,300.00. The NASD shall retain the sum of \$450.00 overpaid as part of the hearing session deposit previously deposited by Claimant Piepgrass, leaving a balance due the NASD from Claimant Berenice Piepgrass of \$850.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

Martha Failing, Esq.
Martha Failing, Esq.
Public Arbitrator
Chairperson

June 4, 1993

Raymond Horn
Raymond Horn
Public Arbitrator

June 4, 1993

Robert J. Wilson
Robert J. Wilson
Industry Arbitrator

June 4, 1993

Date of Service on Parties: 6-17-93