

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant(s)

Thelma Baron

92-01715

Name of Respondent(s)Shearson Lehman Brothers, Inc.
Joseph Finnegan

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 21, 1992, Claimant Thelma Baron by and through her counsel J. Robert MacAnaney, Esq., Sole Practitioner, New York, N.Y., alleged that in October 1989 Respondent Joseph Finnegan, Financial Consultant of Respondent Shearson Lehman Hutton, Inc. was assigned to her account whereby he recommended the sale of Claimant's two remaining investments in her account; Bear Stearns and Prime Motor Inns; and subsequently on March 5, 1990 Respondent Joseph Finnegan recommended the purchase of a convertible bond called Ames Department Stores ("AMES BOND") by explaining to Claimant that it was not a stock, it was a safe income-oriented bond that would yield a return of 7-1/2 percent. Claimant further alleged that Respondent Joseph Finnegan advised her that the convertible bond was much safer, because the convertible feature would reduce the risk and it was safer because Claimant would be getting a high return of income from the bond, whereby, "if the bond went down, Claimant could convert the bonds into stock, if the stock then went down Claimant could switch it back into the bond - whichever was doing better." Claimant contended that approximately one month later, in April 1990, Ames Department Stores announced that it was going into bankruptcy, at which time, Claimant immediately contacted Respondent Joseph Finnegan to express her desire to get rid of the bonds, whereby, Respondent Joseph Finnegan continued to insist that it was still a good investment and recommended that Claimant hold it. Claimant further contended that throughout 1991, Respondent Joseph Finnegan rarely called Claimant, although he continued to send her, on a periodic basis, numerous statements which Claimant believed were backed by Respondent Shearson Lehman Hutton, Inc. that recommended that the Ames Bond be held. Claimant asserted that Respondent Joseph Finnegan misrepresentations and inappropriate handling of her account, as well as, Respondents' Shearson Lehman Hutton, Inc. failure to supervise, caused her to sustain losses.

Respondents, Shearson Lehman Brothers, Inc. and Joseph Finnegan by and through their counsel, Matthew Farley, Esq. of Shanley & Fisher, New York, N.Y., maintained that Respondent Joseph Finnegan first appeared as the salesman on the account on the October 1989 statement and in September 1989, Respondent Joseph Finnegan interviewed the Claimant Thelma Baron to familiarize himself with both her account and her other assets as well as her objectives. Respondents further maintained that Respondent Joseph Finnegan concluded to continue with Claimant's original "income and growth" expression as her objectives. Respondents contended that in March 1990 Respondent Joseph Finnegan recommended the sale of Claimant's Bear Stearns common stock and the Prime Motors Inns positions, at which time, Respondent Joseph Finnegan recommended for Claimant's consideration an investment in the convertible bonds of Ames Department Stores. Respondents further contended that they deny that Respondent Joseph Finnegan ever told Claimant that the convertibility feature of the bond would allow her to switch from bond to common stock and back again at her wish. Respondents asserted that they made no misrepresentations and the loss Claimant sustained were not foreseeable and due to events over which Respondents had no control.

RELIEF REQUESTED

Claimant Thelma Baron requested \$9,000.00 in actual damages plus attorney's fees and reimbursement of the NASD filing fee.

Respondents Shearson Lehman Brothers, Inc. and Joseph Finnegan requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Rebecca A. Novak, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 1, 1992 by the Respondent Shearson Lehman Brothers, Inc. on July 2, 1992 and by the Respondent Joseph Finnegan on July 6, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Thelma Baron against Respondents Shearson Lehman Brothers, Inc. and Joseph Finnegan are dismissed.
2. The parties shall bear their respective costs, including attorneys' fees.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Thelma Baron shall be retained by the NASD, Inc.

AFFIRMATION

I, **REBECCA A. NOVAK, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument. which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: December 16, 1992