

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Levy Markovich

92-01934

Name of Respondents

Shearson Lehman Brothers, Inc.
Keith Ritz

REPRESENTATION

For Claimant Levy Markovich ("Claimant"): Glenn Billington, Esq., a sole practitioner.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Keith Ritz ("Ritz"): Daniel P. Mascaro, Esq., of Baker & Hostetler.

CASE INFORMATION

Statement of Claim filed: June 9, 1992.

Claimant's Submission Agreement signed on: September 8, 1992.

Joint Statement of Answer filed by Respondents on: November 4, 1992.

Respondent Shearson's Submission Agreement signed on: October 1, 1992.

Respondent Ritz's Submission Agreement signed on: October 29, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: September 1, 1993/1 session.

Hearing Location: NASD, Cleveland, OH.

CASE SUMMARY

Claimant alleged that he sought Respondent Shearson's services in advising him as to investing his personal assets. Claimant alleged he was a recent emigrant to the United States and had a reasonable command of English and of financial investments; however he was not a sophisticated investor.

Claimant alleged that in 1988, Respondent Ritz recommended Claimant purchase a certain TWA senior Note (the "Note") which Ritz represented was so 'safe' he 'would buy it for his own mother'. Claimant further alleged Ritz assured him the Note was secured by equipment owned by TWA and that in the event of any trouble with the company, Claimant would be 'the first to be paid'.

Claimant alleged he relied upon Ritz's recommendation and over the next two and one half years as the price of the Notes fluctuated and then dropped substantially, he asked Ritz for assurance as to the safety of the investment and was assured that such fluctuations were normal and that the Notes would be redeemed at their face value upon maturity.

Claimant further alleged that he changed sales agents in 1991, and upon review of his portfolio was informed for the first time that the Notes were not secured

and would not be honored at full face value upon maturity. Claimant also alleged he then tendered his Notes at a value of approximately thirty (30%) of their face but TWA's legal difficulties prevented the consummation of the tender and Claimant was unable to mitigate his damages at that point.

Finally, Claimant alleged Ritz misrepresented the risk of the Notes and that if he had been accurately advised as to their risky nature, he would not have purchased them and, following the purchase, if he had been accurately advised that they would not be redeemed at face value at maturity, he would have sold them to cut his losses. Claimant alleged Ritz knew, or could have known by using the resources available to him, that the advice was materially inaccurate and that Ritz was acting in the course and scope of his employment with Shearson which provided him with the opportunity to advise Claimant.

Respondents denied that Claimant was not a sophisticated investor and alleged he indicated investment goals of appreciation with risk as well as income without risk. Respondents asserted through the period in which Ritz serviced Claimant's account, Claimant pursued an aggressive and active investment strategy.

Respondents denied that Ritz stated the purchase of certain TWA Notes was so safe he 'would buy it for my own mother'; however he did purchase the Notes for his mother prior to purchasing them for Claimant and may have informed Claimant of that fact. Respondents denied that Claimant was unfamiliar with the bond market at the time of the purchase of the Notes. Respondents asserted Ritz discussed generally the purchase of bonds and had explained the bonds were senior in priority to equity securities. Respondents denied that Claimant relied upon Ritz's advice in purchasing the Notes and maintained that Ritz recommended their purchase; however, they asserted that Claimant exercised his investment discretion and authorized the purchase. Respondents contended Ritz never 'guaranteed' that the Notes would be redeemed at full face value and denied that Claimant sought assurances from Ritz.

Finally, Respondents asserted Claimant changed brokers in 1989 and transferred his securities to PaineWebber, Inc. in 1990 and held the Notes long after leaving Shearson.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$27,208.33.

Respondents requested: the Statement of Claim be dismissed; and costs.

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.

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 claims of the Claimant Levy Markovich against Respondents Shearson Lehman Brothers, Inc. and Keith Ritz are dismissed;
2. All other claims are dismissed;

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3. Each party shall bear its own costs, except that respondents are hereby liable, jointly and severally, and shall reimburse to Claimant the amount of \$150.00.

FORUM FEES

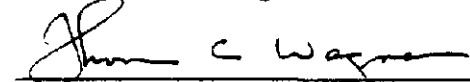
Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee and the following Forum Fees are assessed.

1 session X \$300.00 = \$300.00 minus Claimant's hearing session deposit of \$300.00
= net \$0.00 due.

Forum fees Assessed Against:

1. Claimant is hereby liable in the amount of \$150.00; however, in lieu of further payment, the NASD shall retain Claimant's hearing session deposit and Claimant shall be reimbursed by Respondents in the amount of \$150.00 as noted above;
2. Respondents are hereby liable, jointly and severally, in the amount of \$150.00; however, in lieu of payment to the NASD, Respondents shall reimburse to Claimant the amount of \$150.00 as noted above.

Arbitrator's Signature



Thomas C. Wagner/Public Arbitrator

Date of Decision: September 22, 1993