

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Charlotte Spikes (formerly Charlotte Eskridge),
Individually, and as Trustee of the Eskridge Family
Trust, and as Executrix of the Jonathan Eskridge Estate;
Valerie Rainwater (formerly Valerie Eskridge);
Ashley Eskridge; and Mary Nell King (formerly
Mary Nell Spikes)

and

92-02040

Name of Respondents

Shearson Lehman Brothers, Inc., William G. Gilbert
and J. Wayne Gilleland

REPRESENTATION OF PARTIES

Charlotte Spikes (formerly Charlotte Eskridge), Individually, and as Trustee of the Eskridge Family Trust, and as Executrix of the Jonathan Eskridge Estate; Valerie Rainwater (formerly Valerie Eskridge); Ashley Eskridge; and Mary Nell King (formerly Mary Nell Spikes) (collectively as "Claimants") were represented by W. Kirby Lockhart, Esq., of Counsel Hargis & Wood, Little Rock, Arkansas.

Shearson Lehman Brothers, Inc., William G. Gilbert and J. Wayne Gilleland (collectively as "Respondents") were represented by John E. Jenkins, Esq. of Shearson Lehman Brothers, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about June 18, 1992. Submission Agreement of Claimants Charlotte Spikes (formerly Charlotte Eskridge), Individually, and as Trustee of the Eskridge Family Trust, and as Executrix of the Jonathan Eskridge Estate; Valerie Rainwater (formerly Valerie Eskridge); Ashley Eskridge; and Mary Nell King (formerly Mary Nell Spikes) was signed on June 29, 1992.

Statement of Answer was filed by Respondents on or about September 10, 1992. Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was signed on September 4, 1992 by John E. Jenkins.

HEARING INFORMATION

Pre-hearing conferences were held on Friday, April 23, 1993 for one (1) session and Wednesday, June 2, 1993 for one (1) session. The hearing was held on Wednesday, June 9, 1993 for two (2) sessions. Thursday, June 10, 1993 for two (2) sessions and Friday, June 11, 1993 for two (2) sessions in Little Rock, Arkansas for a total of two (2) pre-hearing and six (6) hearing sessions.

CASE SUMMARY

Claimants alleged that Respondent William G. Gilbert exercised complete control over their accounts, engaged in excessive trading of mutual funds, placed them in unsuitable investments and highly margined the accounts. Claimants also alleged that Gilbert actively concealed the risks inherent in the various investments but also the status of their accounts, including making false statements as to the account balances. Claimants further allege that Gilbert's activities were part of a scheme to generate commissions.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimants and their immediate families included Gilbert's oldest and closest friends; that Gilbert went to extraordinary pains to determine the investment objectives of the Claimants and to present them with various options available to meet those objectives; and that Gilbert explained the potential risks and rewards of the various investment options presented to the Claimants. Responding to the allegations that Gilbert highly margined the accounts, Respondents stated that at various times, Gilbert advised the Claimants against the use of margin. In particular, Respondents state that Gilbert disagreed with the use of margin in Claimant Mary Nell King's account. Affirmative defense including but not limited to the following were asserted by the Respondents: the Statement of Claim fails to state a claim upon which relief can be granted; assumption of the risk; authorization, consent, acquiescence, and ratification; the claims are barred by the doctrines of laches and the applicable statute of limitations; failure to mitigate; and that the claims are barred by the doctrines of waiver and estoppel.

Respondents asserted a Counterclaim seeking indemnification from Charlotte Spikes alleging that Charlotte Spikes made all of the investment decisions for the Eskridge Family Trust and the Jonathan Eskridge Estate and therefore bore the ultimate responsibility for those decisions.

In her Answer to the Counterclaim, Charlotte Spikes denied the allegations set forth in the Counterclaim and stated that she relied upon the advice and recommendations of Respondent Gilbert. Charlotte Spikes also asserted affirmative defenses including but not limited to the following: the Counterclaim is barred by the doctrines of estoppel, waiver, unclean hands, and *in pari delicto*.

RELIEF REQUESTED

Claimants Charlotte Spikes (formerly Charlotte Eskridge), Individually, and as Trustee of the Eskridge Family Trust, and as Executrix of the Jonathan Eskridge Estate; Valerie Rainwater (formerly Valerie Eskridge); and Ashley Eskridge requested an award in the amount of \$177,727.00, interest at the rate of 6% per annum, attorney's fees and punitive damages. Claimant Mary Nell King requested an award in the amount of \$100,433.00, interest at the rate of 6% per annum, attorney's fees and punitive damages.

Respondents requested that the Statement of Claim be dismissed in all respects. On their Counterclaim, Respondents requested indemnification from Charlotte Spikes in the event they were found responsible for damages awarded to Claimants the Eskridge Family Trust and the Jonathan Eskridge Estate.

OTHER ISSUES CONSIDERED & DECIDED

Respondent William G. Gilbert did not file with the N.A.S.D. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

By letter dated May 20, 1993, counsel for Claimants advised the N.A.S.D. and counsel for Respondents that Claimants have elected to dismiss J. Wayne Gilleland from this matter.

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. Respondents Shearson Lehman Brothers, Inc. and William G. Gilbert shall be and hereby are jointly and severally liable for and shall pay to the Claimant Mary Nell King the sum of **Thirty seven thousand dollars (\$37,000.00)**.
2. Respondents Shearson Lehman Brothers, Inc. and William G. Gilbert shall be and hereby are jointly and severally liable for and shall pay to the Claimant Mary Nell King the sum of **Ten thousand dollars (\$10,000.00)** as attorney's fees.

3. All other claims including counterclaims asserted in this matter shall be and hereby are dismissed in their entirety.
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 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 \$200.00 and shall refund the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. on behalf of the Claimants. The N.A.S.D. shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the N.A.S.D. on behalf of the Respondents and Respondent Shearson Lehman Brothers, Inc. shall pay to the N.A.S.D. the sum of \$4,200.00 as additional forum fees.

Forum fees are calculated at the rate of \$750.00 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 \$750.00 previously deposited with the N.A.S.D. on behalf of the Claimants and shall retain postponement fees in the amount of \$750.00 previously deposited with the N.A.S.D. on behalf of the Respondents. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Tom F. Digby, Jr., Esq.
Tom F. Digby, Jr., Esq.
Public Arbitrator, Presiding Chair

June 28, 1993

s/ Patrick A. Burrow, Esq.
Patrick A. Burrow, Esq.
Public Arbitrator

June 30, 1993

s/ Robert T. Allen, Jr.
Robert T. Allen, Jr.
Industry Arbitrator

July 6, 1993