

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Martin W. Gettig

92-02042

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Peyton D. McDonald

REPRESENTATION

For Claimant Martin W. Gettig: Amy Greer, Esq. of Eckert Seaman, Cherin & Mellot, Pittsburgh, PA.

For Respondent Shearson Lehman Brothers, Inc.: Samuel Turvey, Esq., in-house counsel at Shearson Lehman Brothers, Inc.

For Respondent Peyton D. McDonald: Foster S. Goldman, Jr., Esq. of Klastt, Lieber, Rooney & Schloring, Pittsburgh, PA.

CASE INFORMATION

Statement of Claim filed: June 18, 1992.

Claimant's Submission Agreement signed on: May 29, 1992.

Amended Statement of Claim filed on: January 18, 1993.

Joint Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. and Peyton D. McDonald on: September 21, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: September 21, 1992.

Respondent Peyton D. McDonald's Submission Agreement signed on: September 2, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: June 1, 1993 / Two Sessions
 June 2, 1993 / Two Sessions
 July 19, 1993 / Two Sessions
 July 20, 1993 / Two Sessions
 October 6, 1993 / Two Sessions
 October 27, 1993 / Two Sessions
 October 28, 1993 / Two Sessions

Hearing Location: Westin William Penn Hotel in Pittsburgh, Pennsylvania.

CASE SUMMARY

Claimant alleged that as a result of a head injury suffered by Claimant in an automobile accident in 1965 at age 26 he suffers from a neurological impairment which causes memory loss and makes him unemployable and he does not have sufficient recollection to manage his affairs in detail. Claimant further alleged that he opened his first account with Respondent McDonald of Respondent Shearson Lehman Brothers, Inc. in 1988 whereby he directed Respondent McDonald to invest his money so it would yield distributable income in an amount sufficient for Claimant to support himself. Claimant alleged that at first Claimant placed only small amounts for investment but in January 1989 Claimant began to place large amounts into Respondent McDonald's hands. Claimant contended that Respondent McDonald specifically assured Claimant a return of at least 11-3/4% on his money and based on this, Claimant expected and relied upon bi-weekly payments from his account. Claimant contended that he was inexperienced regarding the trading of securities and Respondent McDonald was informed of Claimant's lack of sophistication in investment. Claimant alleged that Respondent McDonald commenced in a pattern of improper, unauthorized and excessive trading in his accounts for the sole purpose of generating commissions for Respondents. Claimant contended that Respondent McDonald made fraudulent misrepresentations as to the status of the account, made unsuitable investments and overcharged Claimant, and as a result Claimant suffered a loss in his account.

Respondents maintained that when the account was first opened Claimant was employed at Gettig Electric, a family owned company, and he had an income of over \$100,000.00 and a net worth, excluding his residence, of \$1,000,000.00. Respondents further maintained that Claimant's investment objectives were listed as "Long Term Growth" and "Businessmen's Risk Appreciation." Respondents maintained that Respondent McDonald did not churn the account and he did not

have either express or implied control over Claimant's account. Respondents further maintained that Respondent McDonald discussed and had prior authorization of Claimant on each and every trade before its execution.

RELIEF REQUESTED

Claimant requested \$240,363.71 in compensatory damages, \$721,091.71 in treble damages, \$721,091.71 punitive damages, and attorneys' fees and costs.

Respondents requested all claims be dismissed.

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. Respondents Shearson Lehman Brothers, Inc. and Peyton McDonald be and hereby are liable, jointly and severally, and shall pay Claimant Martin W. Gettig the sum of \$41,387.38 inclusive of interest.
2. Respondent Shearson Lehman Brothers, Inc. and Peyton D. McDonald be and hereby are liable, jointly and severally, and shall pay Martin W. Gettig the sum of \$13,657.83 to represent attorneys' fees.
3. All other claims be and hereby are dismissed in their entirety.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

14 sessions x \$1,000.00 = \$14,000.00 less \$1,000.00 hearing
session deposit = \$13,000.00 net due.

Claimant be and hereby is liable and shall pay the NASD the sum of \$2,500.00 to represent forum fees.

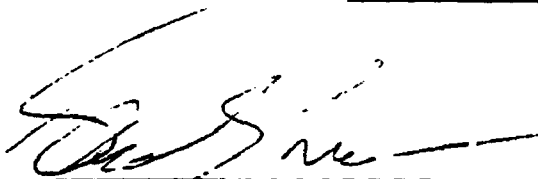
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Respondents Shearson Lehman Brothers, Inc. and Peyton D. McDonald be and hereby are liable, jointly and severally, and shall pay the NASD the sum of \$10,500.00 to represent forum fees.

The NASD shall retain the \$250.00 filing fee and \$1,000.00 hearing session deposit previously paid by Claimant.

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

ARBITRATORS' SIGNATURE

A handwritten signature in dark ink, appearing to read "Frederick E. Liechti", written over a horizontal line.

Frederick E. Liechti, Esq.
Public Arbitrator

Robert N. Sughrue
Public Arbitrator

Richard J. Beisel
Industry Arbitrator

NASD Date of Decision: February 2, 1994

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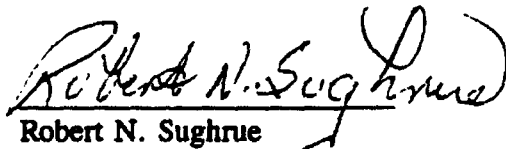
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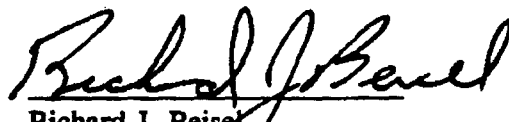
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