

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Keith A. Libbey

92-02048

Name of Respondent

Shearson Lehman Hutton, Inc.

REPRESENTATION

For Claimant at the hearing: Pro Se.

For Respondent at the hearing: J. David Jackson, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed by Claimant: June 18, 1992. Claimant's Submission Agreement signed on: June 12, 1992.

Statement of Answer filed by Respondent on or about: August 27, 1992. Respondent's Submission Agreement signed on: July 22, 1992.

HEARING INFORMATION

Hearing Date/Sessions: February 9, 1993 for two (2) sessions,
March 2, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Keith Libbey ("Libbey") alleged that Respondent Shearson Lehman Brothers, Inc. ("Shearson") engaged in misrepresentation and also breached their fiduciary duty to keep Jenswold King & Associates ("Jenswold"), the money manager, strictly in line with Shearson's advertised standards. Libbey, more specifically, alleged that at the outset of his investment, Shearson and Jenswold represented to him that Jenswold was a "value" manager, low risk and low volatility, etc., but, in fact, had shifted emphasis on the investment process to focus on mostly growth-oriented stocks. Libbey alleged that as a result of Shearson's and Jenswold's misrepresentations, he incurred a loss in his account.

Respondent Shearson denied responsibility for any loss of sums which Libbey alleged in his Statement of Claim, and also denied any misrepresentations which Libbey alleged. Shearson alleged that they did inform Libbey in the summer of 1990 that it believed that Jenswold was beginning to focus more on "growth" rather than "value" oriented stocks, and that they specifically recommended to Libbey that he switch money managers from Jenswold to NWQ. Shearson alleged that Libbey did switch money managers from Jenswold to NWQ on September 26, 1990.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$87,827.97 (\$468,809.57 which was the value of Libbey's account on September 30, 1989 minus \$380,981.60 which was the value of Libbey's account on September 24, 1990) plus interest.

Respondent requested that the Statement of Claim be denied in its entirety and award Shearson its costs and attorney's fees.

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.

The Claimant, Keith Libbey, initially filed his Statement of Claim against Jenswold King & Associates, Inc. Jenswold King is not a member firm of the NASD, and did not have a contract or formal agreement with Keith Libbey, and would not voluntarily submit to the jurisdiction of the NASD, and therefore was not a party to the arbitration filed by Keith Libbey.

Respondent Shearson asserted a Motion For Directed Verdict at the end of the Claimant's case. The panel denied the motion.

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. Respondent Shearson Lehman Brothers, Inc. shall be and hereby is liable for, and shall pay to the Claimant, Keith Libbey, damages in the sum of Sixty One Thousand Eight Hundred Five Dollars and Ninety Two Cents (\$61,805.92);
2. Interest is also awarded on the above stated sum at the prevailing rate beginning from June 30, 1990 until the time the Award is paid by Respondent Shearson;
3. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated for under Forum Fees set forth below.

FORUM FEES

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

4 sessions X \$500 = \$2,000 minus hearing session deposit of \$500 = net \$1,500 due.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00 and shall retain the hearing session deposit in the amount of \$500.000 previously paid to the NASD by the Claimant.

Additional Forum Fees assessed by the Panel in the amount of \$1500 are assessed against Respondent Shearson, payable to the NASD. Respondent Shearson shall also reimburse to the Claimant, Keith Libbey, the sum of \$500.00 which was the amount he previously deposited with the NASD.

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

Concurring Arbitrators' Signatures

Dated:

Cassandra Mihalchik Esq.
Cassandra Mihalchik, Esq.
Chairperson
Public Arbitrator

3-18-93

Emily Seesel, Esq.
Public Arbitrator

Emily B. Boote
Industry Arbitrator

Date Award Served By The NASD: _____

Additional Forum Fees assessed by the Panel in the amount of \$1500 are assessed against Respondent Shearson, payable to the NASD. Respondent Shearson shall also reimburse to the Claimant, Keith Libbey, the sum of \$500.00 which was the amount he previously deposited with the NASD.

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

Concurring Arbitrators' Signatures

Dated:

Casandra Mihalchik, Esq.
Chairperson
Public Arbitrator

Emily Seesel, Esq.
Public Arbitrator

Emily B. Boote
Emily B. Boote
Industry Arbitrator

March 24, 1993

Date Award Served By The NASD: _____

Additional Forum Fees assessed by the Panel in the amount of \$1500 are assessed against Respondent Shearson, payable to the NASD. Respondent Shearson shall also reimburse to the Claimant, Keith Libbey, the sum of \$500.00 which was the amount he previously deposited with the NASD.

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

Concurring Arbitrators' Signatures

Dated:

Casandra Mihalchik, Esq.
Chairperson
Public Arbitrator

Emily F. Seessel
Emily Seessel, Esq.
Public Arbitrator

March 18, 1993

Emily B. Boote
Industry Arbitrator

Date Award Served By The NASD: _____