

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eugene A. Cox

92-02247

Name of Respondents

Shearson Lehman Hutton, Inc.
Robert Grapin

REPRESENTATION

For Claimant at the hearing: Michael Brose, Esq. of Doar, Drill & Skow, S.C., New Richmond, Wisconsin.

For Respondents at the hearing: Tom Vitt, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: July 6, 1992. Amended Statement of Claim filed: February 17, 1993.
Claimant's Submission Agreement signed on: May 27, 1992.

Joint Statement of Answer filed by Respondents, Shearson Lehman Brothers, Inc. and Robert Grapin on: October 19, 1992.

HEARING INFORMATION

Pre-Hearing Conference: March 2, 1993 for one (1) session.

Hearing Date/Sessions: March 10, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant, Eugene Cox ("Cox") alleged that Respondent Shearson Lehman Brothers, Inc. ("Shearson") through its agent, Respondent Robert Grapin ("Grapin"), engaged in unauthorized trading. Cox alleged that he received a confirmation notice indicating that his account purchased 2500 shares of "Americus Trust for GE Shares Scores" ("GE Shares"). Cox alleged that he never requested Grapin to make this purchase, that his account with Shearson was not an open authorization account and that he never ratified this purchase. Cox further alleged that soon after receiving the confirmation notice, he received a margin call on that purchase and he incurred interest charges on that margin account. Cox alleged that Grapin, in order to meet the margin call, sold other stock from Cox's account, specifically, RJR Nabisco Holdings. ("RJR") As a result of these transactions, Cox alleged that he incurred various charges for commissions and fees. Lastly, Cox alleged that the rapid decrease in value of the GE Shares caused him to suffer an economic loss.

In their Joint Statement of Answer, Respondents, Shearson and Grapin, denied each and every allegation of wrongdoing contained in the Statement of Claim. In particular, Respondents alleged that Cox stated to Grapin that he was not interested in safe investments, but was interested in short-term trading ideas and growth. Respondents alleged that Grapin explained the nature of an investment in GE Shares and the risk involved in such an investment. Respondents alleged that after this discussion, Cox authorized the purchase of GE Shares. In addition, Respondents alleged that after Cox received the confirmation notice of the purchase of GE Shares, he never complained to or made any contact with Respondents. Respondents further alleged that due to the decline of GE Shares after Cox's purchase, they issued margin calls to Cox which he was unwilling to satisfy. Therefore, pursuant to the Client Agreement, Shearson liquidated other positions in Cox's account. Respondents alleged that the losses incurred in Cox's account were the result of unfavorable market fluctuations for which neither Shearson nor Grapin are responsible. Lastly, Respondents raised the following affirmative defenses: ratification, assumption of risk, failure to show causation, and failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$44,890.78 plus attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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.

Respondents Shearson Lehman Hutton, Inc. and Robert Grapin did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code, and having answered the claim, appeared and testified at the hearing, is bound by the determination of the panel on all issues submitted.

Respondents filed an Amended Statement of Claim. Respondents had no objection.
Claimant

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 Hutton, Inc. and Robert Grapin, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Eugene Cox, damages in the sum of Twenty Three Thousand Fifty Dollars and Sixty Eight Cents (\$23,050.68);
2. Claimant's request for attorney's fees is denied.
3. Each of the parties shall bear their own expenses, other than those specifically enumerated for herein.

FORUM FEES

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


2 hearing sessions X \$400 = \$800 minus hearing session deposit of \$400 = \$400 due, plus \$300 for the pre-hearing conference session = net \$700 due.

Additional Forum fees Assessed against Respondent Shearson Lehman Brothers, Inc. in the total amount of \$700.

Additional Forum Fees which are assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:


D. Randall Blohm, Esq.
Presiding, Public Arbitrator

5-29-93

James H. Colburn

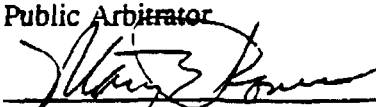
James H. Colburn
Public Arbitrator

3/26/93

Mary E. Powers
Industry Arbitrator

Date Award Served By The NASD: _____

James H. Colburn
Public Arbitrator



Mary E. Powers
Industry Arbitrator

= 3/29/93

Date Award Served By The NASD: _____