

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stanley W. Balzejewski, as SEP Custodian

92-02257

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
David Heiser

REPRESENTATION

For Claimant, Stanley W. Balzejewski as SEP Custodian, Michael F. Bachner, Esq.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and David Heiser ("Heiser"), Paul Williams, Esq., from the law firm of Schupbach, Williams and Pavone.

CASE INFORMATION

Statement of Claim was filed on July 6, 1992.

Claimant's Submission Agreement was signed on June 25, 1992.

Joint Statement of Answer was filed by Shearson and Heiser on September 2, 1992.

Shearson's Submission Agreement was signed on August 17, 1992.

Heiser's Submission Agreement was signed on August 18, 1992.

HEARING INFORMATION

Hearing Date/Sessions: March 3, 1993 - Two Sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York City, New York.

CASE SUMMARY

Claimant alleged that he opened a SEP account with Respondents and told Heiser that the funds in this account were to be treated in a conservative fashion. Claimant also alleges that he told Heiser to watch the account carefully because he did not have the sophistication or time to do so. Claimant further alleges that Heiser promised that the investment would be "safe", conservative, carefully watched and that there would be no loss to the principal.

Claimant alleges that Heiser engaged in trading that was inconsistent with Claimant's stated investment objectives and churned the account by making purchases and sales with the only apparent motive to generate commissions. Claimant contends that the nature of the trading was unsuitable and violated various legal and regulatory requirements set forth by the NYSE and the NASD.

Claimant alleges that Heiser recommended that he purchase SLB U.T.S. #11M and guaranteed that the investment was safe, the income would fluctuate but that the principal would remain the same. Claimant states that he lost almost fifty percent of principal on this speculative investment in a high yield or "junk" product. Claimant also alleges that Heiser caused him to purchase and Shearson recommended that he purchase 75,000 America West Airlines bonds for his retirement account, which represented sixty percent of this account. Claimant states that America West went into bankruptcy and he sustained \$36,847.56 in losses. Claimant further alleges that Heiser recommended that he purchase 1,500 shares of A.D.T. and that he sustained a loss of \$10,437.00. Claimant contends that the total losses sustained in this account was \$52,000.00.

Respondents deny liability and contend that the Statement of Claim is without merit and should be dismissed in all respects. Respondents assert eight affirmative defenses among which are that Claimant was fully aware of all trades and received monthly Statements and confirmations of all trades. Respondents maintain that the trades were suitable in light of Blazejewski's age, 34 years of age, his financial condition and investment objections.

Respondents contend that Claimant made profits in the joint account held with spouse and his SEP account and made no complaint until the problems with respect to America West Airlines surfaced. Respondents maintain that Heiser followed the research related to America West and it appeared that the investment was sound and consistent with Claimants' investment objectives, which included appreciation with risk. Respondents contend that it was Claimant who made the decision to place the bonds in his tax sheltered SEP account because he hoped that there would be a significant total return.

Respondents contend that they should not be held liable for losses sustained on the American West trades because they could not have anticipated the bankruptcy. Additionally, Respondents

state that Heiser called Claimant to consider selling the bonds when they were trading at 37 and that Claimant did not return Heiser's call until the bonds were trading at 32. Respondent also state that at this time Claimant informed Heiser that he wanted to hold the bonds and that he later sold the bonds at another brokerage firm at 18 1/2.

RELIEF REQUESTED

Claimant requests an award, jointly and severally, in the amount of \$52,000.00, reasonable attorney's fees, interest, costs and disbursements and such other and further relief as the arbitrators may deem just and proper.

Respondents request that the Statement of claim be dismissed and that Respondents receive an award of attorney's fees and costs in this matter.

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. All claims against Heiser are dismissed;
2. Shearson is hereby liable to Claimant and shall pay Claimant **THIRTY FIVE THOUSAND SEVEN HUNDRED AND FIFTY SEVEN DOLLARS AND NO CENTS (\$35,750.00)**;
3. Claimant is further awarded interest at the New York State legal rate from the date of the award until the date of payment;
4. The claim for punitive damages is denied;
5. The claim for attorney's fees is denied;

6. The claim for costs and disbursements is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable Filing Fee: \$150.00.

Hearing Session Fees: \$500.00 x 2 session = \$1,000.00.

1. Claimant is hereby assessed \$650.00 for the non-refundable filing fee and one hearing session.
2. Claimant previously paid \$650.00 which shall be credited the fees assessed.
3. Shearson is assessed \$500.00 for one hearing session.

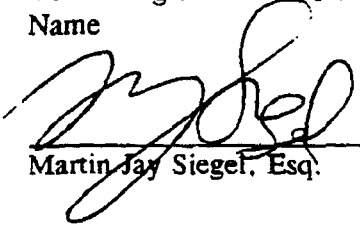
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Martin Jay Siegel, Esq.	-	Public Chairperson
Stanely M. Ulanoff	-	Public Panelist
Valaree M. Moodee, Esq.	-	Industry Panelist

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Concurring Arbitrator's Signature
Name


Martin Jay Siegel, Esq.

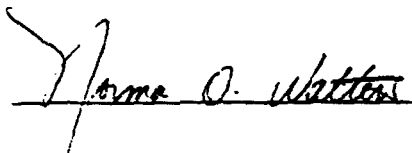
Executed on
~~Date of Decision:~~ 3/23/93

Date of Decision: March 31, 1993

STATE OF NEW YORK
COUNTY OF

S.S.:

On this 23 day of March, 1993, before me personally appeared Martin Jay Siegel know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



NORMA O. WALTERS
Notary Public, State of New York
No. 30-4904194
Qualified in Nassau County
Commission Expires Aug. 31, 1993

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Concurring Arbitrator's Signature
Name

Stanley M. Ulanoff
Stanley M. Ulanoff

Executed on
~~Date of Decision~~ March 3, 1993

Date of Decision: March 31, 1993

STATE OF NEW YORK
COUNTY OF


S.S.:

On this 24 day of March, 1993, before me personally appeared Stanley M. Ulanoff know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Kathleen Hayum

KATHLEEN HAYUM
Notary Public, State of New York
No. 4848072
Qualified in Nassau County
Commission Expires March 30, 1995

Concurring Arbitrator's Signature
Name


Valaree M. Moodee, Esq.

Date of Decision: March 31, 1993

STATE OF NEW YORK ~~YORK~~ ^{NEW JERSEY} S.S.:
COUNTY OF ~~HUDSON~~

On this 25 day of March, 1993, before me personally appeared Valaree M. Moodee know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.



CANDICE P. LANE
Notary Public, State of New Jersey
No. 2062789
Qualified in Bergen County
Commission Expires July 6, 1994