

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

George Gray

vs.

Case #
92-02441

Name of Respondents

Shearson Lehman Brothers, Inc.
Mark Adams

REPRESENTATION

For Claimant: Stephen M. Salon, Esq., of Salon & Danis, P.C.

For Respondents: William A. Hohausser, Esq., of Shearson Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed: July 22, 1992.

Claimant's Submission Agreement signed on: July 13, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: November 6, 1992.

Joint Statement of Answer filed by Respondents on: November 5, 1992.

Respondent's Counterclaim filed on: November 5, 1992.

Claimant's Answer to Counterclaim filed on: December 14, 1992.

HEARING INFORMATION

Pre-Hearing Conference: May 6, 1993/ 1 Session

Hearing Dates/Sessions: June 3, 1993/ 2 Sessions
June 4, 1993/ 2 Sessions
June 15, 1993/ 2 Sessions

Hearing Location: NASD offices in Boston, Ma.

CASE SUMMARY

Claimant alleged that he opened a non-discretionary account with Respondents on or about September 12, 1988 and that Respondents failed to execute trades in accordance with his instructions. Claimant maintained that on January 18, 1990, he had instructed Respondent to close his position in UAL "put" stock options before the end of trading on January 19, 1990 or upon any weakening in the stock price. Claimant further maintained that such transaction did not occur, and upon voicing concern to Respondent regarding the failure to execute the trade and the drop in price of UAL, Mark Adams stated that he, as a Senior Vice-President, would see to it that Claimant's account would not be sold out. Claimant alleged that on January 31, 1990, and contrary to Respondent's assurances, Respondents liquidated Claimant's account in order to cover the loss sustained when UAL dropped in price, the puts were repurchased and a margin sellout occurred.

Respondents denied that Claimant instructed Mr. Adams to liquidate his position in UAL no later than the close of business on January 19, 1990 and maintained that it was Claimant's decision that the UAL position be maintained. Respondents further maintained that the losses were incurred by legitimate and unforeseeable market fluctuations for which neither the brokerage firm nor its representatives should be held responsible.

Respondents alleged in their counterclaim that Claimant signed a Client Agreement at the time he opened his account with Respondents, which allowed him to purchase equities (or other investment products) on margin. Respondents further alleged that as part of this privilege, Claimant agreed that Respondent, should it be deemed necessary, could liquidate or repurchase short option positions in order to cover a debit position, and that Claimant would be responsible for any shortfall. Respondents maintained that in the present case, after liquidation of certain equity positions, there remained a debit balance, for which Claimant is liable.

Claimant denied that any monies were owed to Respondents pursuant to their counterclaim for reasons that the said losses attributable to Claimant were occasioned by the actions of Respondents.

RELIEF REQUESTED

Claimant requested damages in the sum of \$438,958.00.

Respondents requested a dismissal of the Statement of Claim and an award of their costs, including attorney's fees. Respondents further requested in their counterclaim, damages in the amount of \$32,649.97, plus interest since January 1991.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the hearing, Respondents moved to preclude evidence relating to a polygraph expert and a report prepared by the expert. Claimant opposed the Motion.

This panel after hearing arguments on the Motion granted the Motion prior to the commencement of the hearing.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant's claims be and hereby are dismissed in all respects.
2. The Respondent's counterclaim be and hereby is dismissed in all respects.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and shall be borne equally by the parties.

\$250.00 - Non-refundable filing fee.

\$500.00 - Non-refundable Counterclaim filing fee.

7 Sessions X \$750.00 = \$5,250.00 less Claimant's hearing session deposit
(\$750.00) = \$4,500.00 less Respondent's hearing session deposit
(\$750.00) = net \$3,750.00 due.

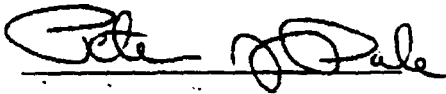
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,875.00 to represent forum fees and the Respondents Shearson Lehman Brothers, Inc. and Mark Adams be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$1,875.00 to represent forum fees.

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

ARBITRATION PANEL

S. Lawrence Gwin, Jr., Esq.	-	Public Chairperson
Peter J. Dale, Esq.	-	Public Panelist
Linda J. Gorham	-	Industry Panelist

Concurring Arbitrator's Signature
Name




Peter J. Dale

Date of Decision: July 9, 1993

ARBITRATION PANEL

S. Lawrence Gwin, Jr., Esq.	-	Public Chairperson
Peter J. Dale, Esq.	-	Public Panelist
Linda J. Gorham	-	Industry Panelist

Concurring Arbitrator's Signature
Name


S. Lawrence Gwin, Jr., Esq.

Date of Decision: July 9, 1993

ARBITRATION PANEL

S. Lawrence Gwin, Jr., Esq.	-	Public Chairperson
Peter J. Dale, Esq.	-	Public Panelist
Linda J. Gorham	-	Industry Panelist

Concurring Arbitrator's Signature

Name *LINDA J. GORHAM*

Linda J. Gorham

Linda J. Gorham

Date of Decision: July 9, 1993