

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Sarah E. Schild
Donald E. Robinson and Rebecca Robinson

92-03061

Name of Respondents

Shearson Lehman Brothers, Inc.
Keith B. Carlyon

REPRESENTATION

For Claimants Sarah E. Schild and Donald E. Robinson and Rebecca Robinson ("Claimants"): Anthony V. Trogan, Esq. of the law firm of Weisman, Trogan, Young & Schloss, P.C. of Birmingham, Michigan.

For Respondents Shearson Lehman Brothers, Inc. and Keith B. Carlyon ("Respondents"): Howard Hertz, Esq. of the law firm of Hertz, Schram & Saretsky, P.C. of Bloomfield Hills, Michigan.

CASE INFORMATION

Statement of Claim filed: August 27, 1992.

Claimant Sarah E. Schild's Submission Agreement signed on: August 17, 1992.

Claimants', Donald E. Robinson and Rebecca Robinson, Submission Agreement signed on: August 21, 1992.

Joint Statement of Answer filed by Respondents on: March 7, 1994.

Respondent Shearson Lehman Brothers, Inc. did not sign a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondent Keith B. Carlyon did not sign a Submission Agreement as required

pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: March 15, 1994 - Two Sessions

Hearing Location: The hearing was held at the American Arbitration Association offices located in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that Claimant Sarah E. Schild, an 80 year old widow, and Claimants Donald and Rebecca Robinson, 79 years old and 77 years old, respectively, were acquainted with each other socially; that none of the Claimants had substantial experience, training or knowledge concerning securities investments; and that Claimants were used as unwitting touts for each other by the Respondents.

Claimants also alleged that at the time their accounts were opened, and thereafter, Respondents were made fully aware of Claimants' age, resources, income and conservative investment objectives through disclosure by Claimants; that Respondents recommended and sold to Claimants in May, 1987, a product known as "Mendik 86", a real estate Limited Partnership; and that Respondents sold the Mendik 86 product through misrepresentations and omissions concerning the product and the risks associated with this investment, notwithstanding that the product was unsuitable for Claimants given their age, income, resources and investment objectives.

Claimants further alleged that Claimants relied totally on Respondents' advice and representations; that Respondents misconduct was a consistent and continuous pattern of fraud based upon Respondents repeated misrepresentations concerning the Mendik 86 product and its value from time to time; and that Respondents are liable to the Claimants based upon their affirmative obligations as set forth in the NASD Rules of Fair Practice, and under theories of fraud, negligent conduct, churning, breach of fiduciary duty and violations of the RICO statute.

Respondents maintained that at the time of the opening of Claimants' account, Claimants were in their mid-sixties and had a net worth of approximately \$500,000.00; that Respondent Carlyon, a registered representative with Respondent Shearson Lehman Brothers, Inc., recommended Mendik Real Estate Limited Partnership to Claimants as an investment alternative to compliment Claimants other investments and provide diversification; that to qualify to purchase Mendik 86, Claimants had to meet certain suitability requirements; and that the suitability requirements of the partnership were clearly met by the Claimants.

Respondents further maintained that prior to purchasing Mendik, Respondent Carlyon explained the risks associated with the Mendik Investment, indicating to Claimants that there was uncertainty of cash flow to meet obligations, and that there could be adverse changes in economic conditions and real estate investments.

Respondents further maintained that no private right of action exists for claims filed which allege violations of "organizational rules"; that all fraud claims must be dismissed based upon Claimants' failure to meet the required burden; and that Claimants have failed to sufficiently plead any wrong-doing so as to put Respondents on notice of the allegations levied.

RELIEF REQUESTED

Claimants requested the following relief, jointly and severally, against all Respondents:

1. The award of \$50,000.00 as out-of-pocket losses.
2. The award of interest at 12%.
3. The award of all costs.
4. The award of actual attorney fees as allowed by the Panel in an amount determined by the Panel.
5. The award of exemplary and punitive damages as allowed by the Panel in an amount determined by the Panel.
6. The award of RICO damages as allowed by the Panel in an amount determined by the Panel.
7. The rescission of all transactions and payment of all monies necessary to make Claimants whole.

Respondents requested that the Panel award Respondents all costs and attorney fees for the defense of this matter and award Claimants \$0.

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.

At the hearing, the parties advised the panel that Claimant Sarah E. Schild was

dismissing, with prejudice, all claims against Respondents Shearson Lehman Brothers, Inc. and Keith Carlyon.

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. All claims against Respondents Shearson Lehman Brothers, Inc. and Keith Carlyon be and hereby are dismissed in all respects.
2. All claims against Respondents Shearson Lehman Brothers, Inc. and Keith Carlyon for attorneys' fees be and hereby are dismissed in all respects.
3. All claims against Respondents Shearson Lehman Brothers, Inc. and Keith Carlyon for exemplary and punitive damages be and hereby are dismissed in all respects.
4. All claims against Respondents Shearson Lehman Brothers, Inc. and Keith Carlyon for RICO damages be and hereby are dismissed in all respects.
5. Each party shall bear their respective costs except that Respondents Shearson Lehman Brothers, Inc. and Keith B. Carlyon shall reimburse Claimants the sum of \$75.00, which represents one-half of the filing fee.

FORUM FEES

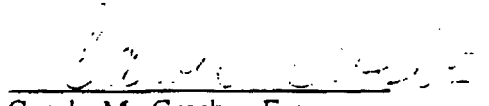
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$500.00 = \$1,000 minus hearing session deposit of 500 = net \$500 due.

Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$500.00.

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

Concurring Arbitrators' Signatures
Name


Carole M. Crosby, Esq.
Chairperson - Public Arbitrator

Name

John Main
Industry Arbitrator

Dissenting Arbitrator's Signature
Name

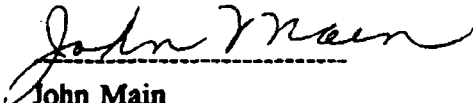
George P. Doom
Public Arbitrator

Date of Decision: May 11, 1994

Concurring Arbitrators' Signatures
Name

Carole M. Crosby, Esq.
Chairperson - Public Arbitrator

Name



John Main
Industry Arbitrator

Dissenting Arbitrator's Signature
Name

George P. Doom
Public Arbitrator

Date of Decision: May 11, 1994

Concurring Arbitrators' Signatures
Name

Carole M. Crosby, Esq.
Chairperson - Public Arbitrator

Name

John Main
Industry Arbitrator

Dissenting Arbitrator's Signature
Name



George P. Doom
Public Arbitrator

Date of Decision: May 11, 1994

Executed on:
Date of Decision: May 9th
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