

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Daniel Pollock

92-03141

Name of Respondent

Shearson Lehman Brothers, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 17, 1992, Claimant Daniel Pollock, by and through his counsel Rebecca A. Novak, Esq. of Novak & Juhase, New York, NY, alleged that on and before March 1, 1991, he maintained a brokerage account at Respondent Shearson Lehman Brothers, Inc. with Mr. Steven Gottesman as Financial Consultant and on March 1, 1991 he placed an order with Respondent by and through Mr. Gottesman to buy 1,000 shares of RJR Nabisco Holding Corp. ("RJR") at \$9.8375, at which time, Claimant's only notification that payment was due, was the confirmation on March 27, 1991 which stated "payment for securities purchased... must be deposited with us by the due date". Claimant further alleged that on March 4, 1991 he mailed a check in the amount of \$9,837.50 and it was received by Respondent on March 12, 1991, which was a full two weeks before the "due date". Claimant contended that unbeknownst to him and without his authorization Respondent by and through Mr. Gottesman sold out his order on March 12, 1991, the very day they received his deposit. Claimant further contended that within a day or two of being made aware of Respondent's unauthorized sell, he was told that the Broker's Operations Manager would cancel the March 12th sale, since Claimant's check was obviously there well before the due date, at which time, Claimant; assuming his original March 1, 1991 purchase of 1,000 shares of RJR was locked in at \$9,837.50; proceeded to sell RJR the following way: 400 shares at \$12.125 on March 25, 1991 and 600 shares at \$12 on April 18, 1992. Claimant asserted that on March 27, 1991, Respondent's Operations Manager reneged on his statement and Claimant's original buy of 1,000 shares of RJR would not be reinstated at which time, Claimant's position was sold out to cover the short sale in his account because Respondent kept "flip flopping" on the account, thus, Claimant was not able to make the profit he had expected.

Respondent Shearson Lehman Brothers, Inc., by and through their in-house counsel Ann Parry, Esq., maintained that Claimant Daniel Pollock opened an account on March 1, 1991, and Steven Gottesman was the financial consultant servicing Claimant's account. Respondent further maintained that at Claimant's initial transaction on that same date, with no other holdings in his account, Claimant authorized the purchase of 1,000 shares of RJR Nabisco Holding Corp. WI or "when-issue-extended" shares at a price of \$9.8375 and received a confirmation as a matter of course after the order was entered. Respondent contended that while a "when-issued" security is an actively traded instrument, buying the security means nothing more than that the client has "shown interest" and this does not guarantee that the stock itself will very actively trade in the public market. Respondent further contended that in this instance, there was sufficient public demand for these as-yet-unissued shares and, as a result, they eventually went "regular", at which time, it can be traded for profit and only at that time can individuals who had purchased the "when-issued" securities realize a profit by selling their shares. Respondent asserted that on March 4, 1991 they sent a mailgram to Claimant stating that \$3,685.00 was due on the account, at which time, Claimant was informed that if a deposit in the above amount was not received by March 8, 1991 they would be forced to sell out his position in accordance with house and New York Stock Exchange rules. Respondent further asserted that when no payment had been received by March 8, 1991, they delayed action for another two business days as a courtesy to Claimant and when no payment was received by March 12, 1991, Respondent proceeded to sell out Claimant's position.

RELIEF REQUESTED

Claimant Daniel Pollock requested \$2,212.50 in actual damages together with legal fees in the amount of \$500.00 plus interest at the statutory rate of 9% per annum from April 18, 1991 and reimbursement of the NASD filing fee.

Respondent Shearson Lehman Brothers, Inc. requested the claim be dismissed and they be awarded costs and expenses.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Michael E. Olney, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 9, 1992 and by the Respondent on February 2, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to the Claimant Daniel Pollock the sum of \$1,843.89 in damages.
2. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to the Claimant Daniel Pollock simple interest at the rate of 9% per annum from April 18, 1992 to the date of payment of the award.
3. The Claimant's request for legal fees is denied.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Daniel Pollock shall be retained by the NASD, Inc. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to the Claimant the sum of \$50.00, as reimbursement.

AFFIRMATION

I, MICHAEL E. OLNEY, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: July 16, 1993

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STATE OF: New York

SS:

COUNTY OF: New York

On this 6th day of July, 1993, before me personally appeared Michael E. Olney, Esq., to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Karen A. Mickelsen

KAREN A. MICKELSEN
Notary Public, State of New York
No. 24-4869213
Qualified in Kings County
Commission Expires Nov. 20, 1993