

NASD AWARD

Claimant

Raymond L. Ho

Respondents

Shearson Lehman Brothers, Inc.
and Patrick Castelli

Case Number
92-03261

REPRESENTATION

For Claimant, Raymond L. Ho ("Ho"): Richard W. Epstein, Esq. of Greenspoon, Marder, Hirschfeld & Rafki, Ft. Lauderdale, Florida.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Patrick Castelli ("Castelli") Lisa Cerasia, Esq. of Shearson, New York, New York.

CASE INFORMATION

Statement of Claim filed: September 28, 1992. Claimant's Submission Agreement signed: September 23, 1992.

Respondents' Statement of Answer filed: February 18, 1993. Respondents' Submission Agreements signed: February 9, 1993 by Castelli, and on March 3, 1993 by Lisa Cerasia on behalf of Shearson.

HEARING INFORMATION

On January 20, 1994, in Ft. Lauderdale, Florida, a prehearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On January 25 and 26, 1994, March 15 and 16, 1994 and May 16 and 17, 1994, in Ft. Lauderdale, Florida, hearings lasting 12 sessions were conducted.

CASE SUMMARY

Claimant alleged that his account was excessively traded and that the short sale transactions in three different stocks were separately and in combination, unsuitable investments for Mr. Ho. Claimant alleged that, in particular, the two short sales of Synergen, Inc. were unsuitable in that: the size of each short sale far exceeded any amount which was suitable or appropriate for Claimant given his investment objectives and risk tolerance; and, each of these transactions violated margin requirements established by the Securities and Exchange Commission (Regulation T).

Respondents denied all allegations of wrongdoing and alleged that: Claimant is a sophisticated and experienced investor who willingly assumed the risks. Respondents asserted affirmative defenses of: failure to state a claim; estoppel; authorization; waiver; ratification; Shearson did not make any misrepresentations; assumption of risk; unforeseen market fluctuations; the allegations relating to punitive damages are merely conclusory; the New York law and the U.S. and New York State Constitutions preclude Claimant from recovering punitive damages; statute of limitations; lack of proximate cause; the purported damages are fictitious; failure to plead fraud with particularity; comparative fault; any representations were expressions of opinion; the alleged misrepresentations were not material; and, compliance with all governmental regulations.

RELIEF REQUESTED

Claimant requested damages in excess of \$100,000.00 plus costs, interest, punitive damages\ and attorney's fees

Respondents requested dismissal of the claim plus costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a signed handwritten 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) Respondents are found not liable and, therefore, all claims against them are hereby dismissed.

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- (2) Claimant's request for attorney's fees, costs, and punitive damages is denied.
- (3) Respondents' request for costs is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$9,300.00 (one prehearing conference x \$300.00 plus 12 sessions x \$750.00 per session).

- (1) Claimant is hereby assessed \$9,300.00 for which the NASD shall retain the \$750.00 hearing session deposit and the \$300.00 overpayment previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$8,250.00.
- (2) The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

/s/
Casey W. Mills, Esq.

Public/Chairman

/s/
Gordon K. Grandy

Public

/s/
Robert P. Root

Industry

Date of Decision:

6/22/94