

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Boyce

92-03420

Name of Respondents

Shearson Lehman Brothers, Inc.
Edward H. Welbourn, III
William O. Bare, Jr.

REPRESENTATION

Claimant John Boyce ("Claimant") was represented by Stephen R. Tully, Esq. and Steven Richman, Esq. of Seigel, Tully and Furrer.

Respondent Shearson Lehman Brothers, Inc. ("Shearson") was represented By Charles R. Mills, Esq. of the law firm of Lord Day & Lord, Barrett Smith

Respondents Edward H. Welbourn, III ("Welbourn") and William O. Bare, Jr. ("Bare") were represented by: David B. Hamilton and Sharon A. Snyder, Esq. of Ober, Kaler, Grimes & Shriver.

CASE INFORMATION

The Statement of Claim was filed October 7, 1992.

Amended Statement of Claim was filed on: October 6, 1993.

Claimant's Submission Agreement was signed on: November 11, 1992.

Joint Statement of Answer filed by Respondents Welbourn and Bare (collectively referred to as "Respondents") on: January 4, 1993.

Welbourn's submission agreement was executed on December 28, 1992.

Bare's submission agreement was executed on December 28, 1992.

Shearson's Statement of Answer was filed on: December 31, 1992

Shearson's submission agreement was executed on March 5, 1993.

Amended Statement of Answer was filed by Shearson on: January 4, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: November 22, 1993 - 2 sessions
 November 23, 1993 - 2 sessions
 December 8, 1993 - 2 sessions

Hearing Location: Omni Inner Harbor Hotel, Baltimore, Maryland.

CASE SUMMARY

Claimant alleged that based on both a written and oral representations by Claimant and Respondents, they had entered into partnership. Claimant alleged that Respondents ended that partnership in a manner which violated their responsibilities to Claimant and damaged him. Claimant alleged that Respondents had undertaken a campaign to notify all clients of the partnership dissolution and solicited their business. Claimant asserted that said actions of Respondents has damaged and discredited his long standing relationship with his clients and business accounts. Claimant alleged that Respondents actions constitute an immediate and direct threat to Claimant's ongoing business relationship with those clients and to his livelihood.

Respondents categorically denied all allegations of wrongdoing asserted by Claimant. Respondents maintained, among other things, that the parties were a part of a securities sales team at their employer which ceased to function satisfactorily because of the behavior and action of Claimant. Respondents maintained that they took steps to terminate the sales team in an amicable fashion. Respondents asserted that if there was any damage to Claimant, it was caused by his own action and not by them. Respondents also maintained that if there was a partnership agreement, it had no assets and was terminable at will. Respondents denied that they violated a duty owed to Claimant under any reasonable construction of their relationship.

RELIEF REQUESTED

Claimant requested compensatory damages against Respondents, jointly and severally, in the amount of One Million Dollars plus interest and cost of this arbitration. Claimant requested an interlocutory and final injunction prohibiting Respondents from directly or indirectly soliciting, contacting, advising any of Claimant's customers for one year. Claimant requested an interlocutory and final injunction prohibiting Respondents from directly or indirectly providing any information, advice, consultation or otherwise contact customers of Claimant

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regarding the status of any relationship between the Claimant and the Respondents. Claimant requested an interlocutory and final injunction prohibiting the disbursement of any and all commissions generated as a result of transactions by and for the customers and clients of Claimant and/or the partnership among Claimant and Respondents, until such time that ownership of said accounts is determined. Claimant requested a determination and an accounting of all client accounts, any and all disbursements and commissions generated therefrom, and any and all commission or payments of any kind deriving therefrom and a disbursement of said sums to Claimant as his interest may appear.

Respondents requested that an award be made against Claimant and in their favor on all claims.

OTHER ISSUES CONSIDERED & DECIDED

Shearson Lehman Brothers, Inc., now known as Smith Barney Shearson, Inc. (the employer) as securities brokerage firm employing the parties was at one time a Respondent, but by agreement of all parties was dismissed from this proceeding and so notified the NASD and the Arbitrators of that fact. Consequently, Shearson is no longer a party to this arbitration.

All motions made by all parties, including former party Shearson, were previously considered and denied. All those rulings are reaffirmed at this time. All other requests by the parties are denied except as set forth below.

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. Claimant established over the course of many years a specialized business involving the sale of certain securities to institutions all done as an employee of registered broker dealers. Later Respondent Welbourn and even later Respondent Bare were chosen by Claimant to become associated with him in what was a highly prosperous business enterprise operated by the parties. The parties determined among themselves, independent of

their employer, the manner in which they would divide the retail portion of compensation received from transactions with clients. They also serviced client relationships initiated by the others with a predetermined compensation split irrespective of who handled a specific transaction. The parties successfully transferred this enterprise from Thomson McKinnon to their current employer. This close relationship required and exhibited a high degree of trust and confidence between the parties and engendered a concomitant fiduciary like duty in dealing each with the other.

2. There came a time when Respondents determined that Claimant's conduct was unacceptable and had become counterproductive to the enterprise's effective functioning. They terminated the relationship with Claimant. The panel has concluded that the manner in which this was done did not meet the high duty owed Claimant. The Panel also finds the breach of this duty damaged Claimant. The panel finds that of the over 100 accounts maintained by the enterprise all but 26 were properly divided between the parties. However, with respect to these disputed accounts, Respondent Welbourn with acquiescence of Respondent Bare and without consultation with or agreement by Claimant, selected the individuals employed by those client's firms who would receive a letter sent by the parties employer to those clients. This letter asked the clients which of the parties they wanted to service their account in the future. Claimant had no opportunity to dispute the person selected to receive this letter and in fact objected to this whole process of determining who would be allocated the account. Respondents well knew that they had a long standing understanding with Claimant concerning the distribution of compensation received from these disputed accounts, and that the income stream from these accounts was substantial. This termination process resulted in all, except four, of these accounts being lost by Claimant. Respondents' actions did not meet the high duty owed Claimant arising from the many years of trust and confidence necessary for the parties to function so successfully.
3. The question then arises as to what damages are appropriate. In fairness to Respondents the evidence established that for some time Claimant had proved in many ways to be a disruptive, counterproductive participant in the enterprise. Claimant had numerous disputes and disruptive interchanges with client's, traders, and others. The evidence also shows that as the parties business evolved, it required more specialization and value added service to clients. Claimant not only failed to specialize, but also failed to maintain work habits necessary to provide the quality of service required by clients. Claimant also was responsible for numerous errors which exposed Respondents and Claimant to great financial risk. In the judgment of the panel all the above factors greatly diminish the

value of the income stream that Claimant could maintain was due him from the disputed 26 accounts even should he have obtained all in the dissolution. There is also the natural attrition of accounts particularly where value added service is so essential in maintaining the accounts.

4. Claimant is hereby awarded the flat sum of \$30,000; with \$15,000 to be paid to Claimant by Respondent Welbourn, and \$15,000 to be paid to Claimant by Respondent bare. No interest is awarded.
5. All other requests for damages requested by Claimant are denied.
6. That the parties shall bear their own costs and attorneys' fees.

OTHER COSTS

The cost of the telephone hook up and its use by the Claimant in providing testimony from his expert witness shall be borne by the Claimant. Therefore, Claimant is assessed costs in the amount of \$200 for the tele-conferencing charge incurred.

FORUM FEES

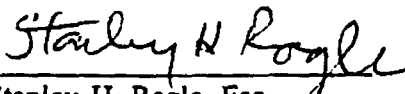
Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

6 sessions X \$1000 = \$6,000

Forum fees Assessed Against: The cost of the forum fees shall be equally assessed between the Claimant and the Respondents so that Claimant is assessed forum fees in the amount of \$3,000 and Respondents Welbourn and Bare are jointly and severally assessed \$3,000. Claimant is also assessed "other costs" of \$200 so that the total due from Claimant is \$3,200, however Claimant is entitled to offset this amount with his hearing session fees of \$950 so that the amount due from the Claimant is \$2,250.

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

Concurring Arbitrator's Signature
Name


Stanley H. Ragle, Esq.

Public/Industry

Industry Arbitrator

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Gordon F. Linke

Public/Industry

Industry Arbitrator