

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Louis Shaw

and

92-03497

Name of Respondents

Shearson Lehman Brothers, Inc.
and Thomas Alley

REPRESENTATION OF PARTIES

Louis Shaw ("Claimant") was represented by Michael W. Lillie, Esq., Englewood, Colorado.

Shearson Lehman Brothers, Inc. and Thomas Alley ("Respondents") were represented by Charles F. Brega, Esq. of Brega & Winters, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about October 13, 1992. Submission Agreement of Claimant was signed on September 17, 1992.

Statement of Answer was filed by Respondents Shearson Lehman Brothers, Inc. and Thomas Alley on or about December 28, 1992. Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was signed on November 20, 1992 by Ann Parry. Submission Agreement of Respondent Thomas Alley was signed on January 5, 1993.

HEARING INFORMATION

The hearing was held on Friday, August 27, 1993 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged claims for common law fraud and intentional misrepresentation. Specifically, Claimant alleged that Respondent Alley did not advise her that the Government Income Fund which she had purchased had anything to do with options. The Claimant had trusted Respondent Alley who would not put her into any risky investments. Claimant also alleged that the

Respondents were negligent, violated N.A.S.D. Rules of Fair Practice, and breached their duties of fair dealing and good faith.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that prior to investing in the MFS Lifetime Government Income Plus Trust, Alley and the Claimant discussed the nature and meaning of the income plus feature. Respondents further stated that from time to time, the Claimant and Alley would discuss whether the Claimant would be more comfortable in transferring to another fund in the MFS family of funds. Respondents finally stated that the Claimant by failing to promptly notify the Respondents that the investment was not consistent with her objectives has ratified the investments, waived any right to complain, and is estopped from raising objections.

RELIEF REQUESTED

Claimant requested an award of out of pocket losses in the approximate amount of \$14,000.00 plus the lost return on her investment or interest, whichever is more appropriate, which she estimates at \$5,000.00, all her arbitration and lawyer costs which she estimates to be approximately \$5,000.00. Claimant also requested an award of punitive damages in the amount of \$25,000.00.

Respondents requested that the Claimant receive nothing and that they recover their costs.

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 original(s) remain on file with the N.A.S.D.

AWARD

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

1. The claims asserted against Respondents Shearson Lehman Brothers, Inc. and Thomas Alley in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses, and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall **retain** the non-refundable filing fee in the amount of \$120.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the N.A.S.D. by the Claimant. Respondent Shearson Lehman Brothers, Inc. shall pay to the N.A.S.D. the sum of \$400.00 as additional forum fees.

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each prehearing conference, if any.

The N.A.S.D. shall retain postponement fees in the amount of \$400.00 previously deposited with the N.A.S.D. on behalf of the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

s/ Charles G. Michaels, Esq.
Charles G. Michaels, Esq.
Public Arbitrator, Presiding Chair

September 14, 1993

s/ Robert L. Druva
Robert L. Druva
Public Arbitrator

September 14, 1993

s/ Devra Perch
Devra Perch
Industry Arbitrator

September 17, 1993