

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

Richard and Jean Foley

No. 92-03500

Names of Respondents

Shearson Lehman Brothers, Inc. and
David Jacobson

REPRESENTATION OF PARTIES

Claimants, Richard and Jean Foley appeared Pro Se.

Respondents, Shearson Lehman Brothers and David Jacobson were represented by Samuel A. Turvey, Esq., Shearson Lehman Brothers, New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on October 13, 1992.

Claimants, Richard and Jean Foley's Submission Agreement was signed on January 25, 1993.

A Joint Statement of Answer was filed with the NASD by Respondents, Shearson Lehman Brothers, Inc. and David Jacobson on March 4, 1993.

Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement was signed on June 9, 1993 by Samuel A. Turvey, Vice President and Associate General Counsel.

Respondent, David Jacobson's Submission Agreement was signed on May 26, 1993.

Shearson Lehman Brothers, Inc. and David Jacobson filed an Amended Answer on June 10, 1993.

Shearson Lehman Brothers, Inc. and David Jacobson filed a

Motion to Dismiss certain of the Claims pursuant to Section 15 of the NASD Code of Arbitration Procedure with the NASD on July 16, 1993.

Richard and Jean Foley filed a reply to the Section 15 Motion to Dismiss with the NASD on or about July 26, 1993.

HEARING INFORMATION

The hearing took place on September 22, 1993 for two (2) hearing sessions and September 23, 1993 for two (2) hearing sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimants, Richard and Jean Foley ("the Foleys") alleged that Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and David Jacobson ("Jacobson") grossly misdirected their funds and disregarded their investment goals which were preservation of capital and income in preparation for their retirement in 1986. The Foleys contended that Shearson and Jacobson were negligent and irresponsible in investing their funds in "unsuitable" investments of Balcor Realty Inv. 85-1, Mercury Savings & Loan, America West Airlines, Western Savings Corp. Bond, Pima County Muni Bond, Tucson G.O. Bond, Navapachi Hosp. Muni Bond, St. Lukes Hosp. Muni Bond, Safeway Corp. Bond, UTS Sun Distributors, Flagstaff Muni Bond, Valero Natural Gas. Pref., Shearson Lehman Unit Trust #1, #4 and #9, Equitable Real Estate Lt. Partnership, Grubb Ellis Realty Inc. Trust, Liberty Tax Credit, Ltd. Partnership and ACM Govt. Securities Fund.

Respondents, Shearson and Jacobson denied the allegations of negligent handling of the account and denied that the investments which were purchased were not in the best interest of the Foleys. Shearson and Jacobson asserted that the Foleys were capable of understanding the potential risks to their capital to accomplish their investment goals. Shearson and Jacobson alleged that the losses suffered in their account were due to market fluctuations, particularly in the high yield and real estate markets.

Shearson and Jacobson filed a Motion to Dismiss certain of the Claims asserted by the Foleys due to the fact that they were time barred pursuant the Section 15 of the NASD Code of Arbitration Procedure. Specifically, Shearson and Jacobson requested that the claims for damages due to the purchases of Balcor Realty Inv. 85-1, Mercury Savings & Loan, America West Airlines Western Savings Corp.

Bond, Pima County Muni Bond, Tucson G.O. Bond and Navapache Hosp. Muni Bond were ineligible for arbitration because they were purchased more than six years prior to the filing of the Statement of Claim with the NASD.

The Foleys responded to the Motion and requested the Motion to Dismiss be denied.

RELIEF REQUEST

The Foleys requested damages in the amount of \$248,039.26

Shearson and Jacobson requested dismissal of the claim.

OTHER ISSUES CONSIDERED AND DECIDED

A preliminary ruling on the Section 15 Motion to Dismiss was made and the parties were informed by letter dated September 14, 1993 from the NASD that the claims for damages resulting from the purchases of Balcor Realty Inv. 85-1, Mercury Savings and Loan, America West Airlines, Pima County Muni Bond, Tucson Muni Bond and Navapache Hosp. Muni Bond were ineligible for arbitration. However, the Foleys' investment in Western Savings Corporate Bonds was eligible for arbitration as were all other investment not the subject of the Motion to Dismiss. The parties were also advised in the letter from the NASD that the motion could be reasserted to the arbitration panel within either parties' discretion.

The parties have agreed that the Award in this matter may be executed by 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by the Foleys against Shearson and Jacobson shall be and are hereby denied and dismissed in their entirety; and,
2. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$750.00 are assessed against the Foley's. Additional Forum Fees in the amount of \$1500.00 are assessed against Shearson. Forum Fees were assessed on the basis of \$750.00 per hearing session for Four (4) hearing sessions.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Dated:

Name:

October 25, 1993

/S/ Charles Finch
Charles Finch, Esq.
Presiding Chair
Public Arbitrator

October 25, 1993

/S/ Ted R. Pickett
Ted R. Pickett
Panelist
Public Arbitrator

November 8, 1993

/S/ Arnold J. Weinberg
Arnold J. Weinberg
Panelist
Industry Arbitrator

Date Award Served by the NASD: November 24, 1993