

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Manhattan College Endowment Fund

92-03681

Name of Respondents

Shearson Lehman Brothers, Inc.
Peter M. O'Neill

REPRESENTATION

For Claimant Manhattan College Endowment Fund ("Manhattan College") appeared Franklin D. Ormsten of the law firm of Ormsten & Evangelist, Jericho, NY.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson") appeared Harry T. Walters, Esq. of Smith Barney Shearson's in-house counsel.

For Respondent Peter M. O'Neill ("O'Neill") appeared Robert J. Hausen, Esq. of the law firm of Chadbourne & Parke, New York, NY.

CASE INFORMATION

Statement of Claim filed on October 28, 1992.

Amended Statement of Claim filed on September 14, 1993.

Amended Statement of Claim filed on October 11, 1993.

Claimant's Submission Agreement signed by Brother Thomas Scanlan, President of Manhattan College on October 20, 1992.

Joint Statement of Answer filed by Respondents on April 27, 1993.

Amended Statement of Answer filed by Respondents on October 18, 1993.

Amended Statement of Answer filed by Respondents on February 17, 1994.

HEARING INFORMATION

Prehearing Dates/ Sessions: October 26, 1993 - One Session

Hearing Dates/Sessions:	November 8, 1993	-	Two Sessions
	November 9, 1993	-	Two Sessions
	November 29, 1993	-	Two Sessions
	December 7, 1993	-	Two Sessions
	December 14, 1993	-	Two Sessions
	December 15, 1993	-	Two Sessions
	May 3, 1994	-	Two Sessions
	May 4, 1994	-	Two Sessions
	June 23, 1994	-	Two Sessions
	July 7, 1994	-	Two Sessions
	July 8, 1994	-	Two Sessions

The hearings were held at the NASD offices in New York City, New York and at Fraunces Tavern located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about February 24, 1989, Claimant entrusted approximately \$5, 502,000.00 of its college endowment fund to the management and care of the Manhasset office of Shearson Lehman Hutton (n/k/a/ Smith Barney Shearson); that the financial consultant servicing the account was Peter O'Neill ("O'Neill"); and that O'Neill, a college alumnus, professed his concern for the college's well being and standing.

Claimant also alleged that its claim was premised on unauthorized margin transactions; on excessive transactions; on O'Neill's abuse of discretion in handling the account; and on O'Neill's repeated representations to the college that it would not be charged any fee whatsoever. It was further alleged by the claimant the commission charges and mark-up charges were excessive and dramatically high and that many of these improper charges derived from a series of excessive transactions and from improperly margined transactions.

Additionally, Claimant alleged that Respondent Shearson neglected to supervise and review Claimant's account as required by applicable law and regulations or having conducted such reviews, chose to ignore the results thereof; that both Shearson and O'Neill violated their duties as fiduciaries; that Respondents consistently misrepresented the progress, status and prospects of the account; and that Respondents engaged in a pattern of racketeering activity in clear violation of the racketeering statute. Further, Claimant alleged that Respondents violated the laws and rules governing discretionary accounts and that Respondent violated their contractual obligation, either expressly or impliedly, to deal fairly and honestly with Respondents.

Respondents denied that the Claimant was misled as to the profitability of the account; that Claimant was overcharged for transaction costs; and denied that they

are liable to Manhattan College in any amount.

Respondents maintained that in 1988, O'Neill was asked by Brother Thomas Scanlan to serve on an ad hoc committee to explore the possibility of building a new dormitory; that O'Neill spent considerable time exploring the college's financing options; and that O'Neill initiated the financing and construction of what became the East Hill dormitory. Respondents further maintained that the successful dormitory financing increased the college's need for income and decreased its need for long-term growth, facts which pointed to a shift away from stocks and towards bonds and other fixed income vehicles.

Additionally, Respondent maintained that O'Neill agreed that Manhattan College would be placed in a regular retail account which would not incur management fees, but told the administration that Manhattan College would pay transaction costs. Further, in light of the multi-layered oversight structure, including inside administration officers, outside trustees and independent auditors, Respondents maintained that it is inconceivable claimant would assert that O'Neill misled the college or traded the account against its wishes. Respondents maintained that the reasonableness mark-up varies with the size, price and type of security transacted; that O'Neill frequently received production credits of less than 1%; that many transactions were done at 1/2%; and that many of the large, short term bond transactions were done at 1/32%.

Respondents further maintained that the statement of claim fails to state a claim upon which relief can be granted; Respondents did not make false representations to Claimant; respondents did not act with scienter in any respect concerning the college accounts; the claims are barred by waiver, estoppel, acquiescence and acceptance of the conduct alleged; the claims are barred by the applicable limitations period, eligibility requirement and principles of laches. Further, Respondents maintained that the statement of claim fails to state a claim for RICO because it fails to plead adequately a pattern and an enterprise; it fails to allege an actionable relationship among the claimant, the enterprise and the Respondent; it fails to plead adequately a violation of section 1962 (a) (b) or (c); and it fails to allege an injury "by reason of" the violation.

RELIEF REQUESTED

Claimant requested an award in its favor as follows: (a) approximate overcharges in the two year life of the account including commissions and markups on principal transactions in the amount of \$685,000.00, less a standard management fee of 1/2 of one percent on an average fund of about 6.5 million for each of two years in the amount of \$65,000.00, for a total of \$620,000.00; (b) simple interest at the legal rate of 9% per year to the anticipated date of the hearing in the amount of \$111,000.00; (c) plus currently anticipated and estimated filing fees, forum costs, expert fees, accounting fees and attorney's fees in the amount of \$100,000.00; and (d) anticipated treble damages in the amount of \$2,493,000.00

Respondents requested that the claim be dismissed in its entirety and that they be awarded the costs of this proceeding.

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 originals remain on file with the NASD. The parties further agreed to accept an award which is rendered by arbitrators Carey and Brody as arbitrator Jerome Goodgal became seriously ill prior to the resolution of this matter. Such illness resulted in Mr. Goodgal being unable to continue to perform his responsibilities as an arbitrator.

AWARD

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

1. Respondent Shearson Lehman Brothers, Inc. (n/k/a Smith Barney Shearson, Inc.) be and hereby is liable and shall pay to the claimant the sum of \$73,200.00, interest specifically excluded.
2. Respondent Peter O'Neill be and hereby is liable and shall pay to the claimant the sum of \$48,800.00, interest specifically excluded.
3. All claims for treble damages be and hereby are denied.
4. Each party shall bear their respective costs, including attorneys' fees.
5. If the award is not paid within 30 days of the date of the award, interest shall accrue at the rate of 7.25 % per annum until the award has been paid.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has determined to assess the following Forum Fees:

1 pre-hearing session x \$300.00 = \$300.00
22 sessions X \$1000 = \$22,000 minus hearing session deposit of 1000 = net
\$21,000.00 due.

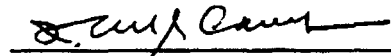
TOTAL DUE: \$21,300.00

Forum fees Assessed Against:

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$10,650.00 representing one-half of all outstanding forum fees.
2. Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$10,650.00 representing one-half of all outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name



Neil J. Carey
Chairperson - Public Arbitrator


Mark S. Brody
Industry Arbitrator

STATE OF NY

COUNTY OF NY

On this 9 day of August, 1994, before me personally appeared Neil Carey known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Date of Decision: August 24, 1994


DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

TOTAL DUE: \$21,300.00

Forum fees Assessed Against:

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$10,650.00 representing one-half of all outstanding forum fees.
2. Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$10,650.00 representing one-half of all outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name

Neil J. Carey
Chairperson - Public Arbitrator

Mark S. Brody
Mark S. Brody
Industry Arbitrator

STATE OF New York

COUNTY OF Suffolk

On this 19th day of August, 1994, before me personally appeared Mark S. Brody known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Ronald D. Weiss

RONALD D. WEISS
Notary Public, State of New York
No. 31-8000907
Qualified in New York County
Commission Expires August 10, 1995

Date of Decision: August 24, 1994