

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Donald Johnson for the Estate of Clarence A. Johnson

vs.

Case # 92-03974

Name of Respondents

Shearson Lehman Brothers, Inc.
David Hornburg
John P. Bevilacqua

REPRESENTATION

For Claimant, David Johnson, Bruce Garfield from Investors Arbitration Services, Inc.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson") and David Hornburg ("Hornburg"), John P. Bevilacqua, Esq., in-house counsel.

CASE INFORMATION

Statement of Claim filed on November 23, 1992.

Claimant's Submission Agreement was signed on January 5, 1993.

Joint Statement of Answer filed by Shearson and Hornburg on July 19, 1993.

Shearson's Submission Agreement signed on July 15, 1993.

Hornburg's Submission Agreement signed on July 15, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: November 11, 1993 - 2 sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that he is an unsophisticated investor who had no formal training or educational background in investing and very little investment experience. Claimant alleged that he was the administrator of his father's estate which included 4040 shares of Sears stock. Claimant alleged that Hornburg was an investment advisor for Shearson who suggested that the Sears stock be sold. Claimant alleged that he emphatically replied that he would not consider selling the stock until it reached \$40 per share and perhaps not even then. Claimant alleged that Hornburg sold 1/2 of the stock without authorization. Claimant alleged that he complained to the branch manager who made light of the situation and stated that he was going to do nothing about it. Claimant alleged that Respondents violated Sections 10(b) and 20 of the Securities Exchange Act of 1934, is guilty of fraud, the intentional misrepresentation of fact, and breach of fiduciary duty.

Respondents maintained that Claimant deposited 4040 shares of Shears common stock into an estate account at Shearson. Respondents maintained that Hornburg sold half of the shares of the Sears stock at Claimant's instructions. Respondents maintained that Claimant was contacted by Hornburg to confirm the transaction and price. Respondent maintained that a trade confirmation was also sent. Respondent maintained that despite numerous conversations and interactions with Hornburg in the months following the sale of the Sears shares neither the Claimant nor his counsel expressed any dissatisfaction with any aspect of the account to Hornburg or any other employee of Shearson.

RELIEF REQUESTED

Claimant requested:

- 1) \$34,267.00 in Compensatory damages
- 2) pre-award and post-award interest as allowed by law
- 3) for cost of arbitration and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable and just.

Respondent requested: that the statement of Claim be dismissed in its entirety, and that it be awarded costs, including attorney's fees incurred in this action.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the award which the original remain on file with the NASD.

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. The Claimant's claim is denied in its entirety.
2. The Claimant shall pay all forum fees associated with the arbitration.
3. The Respondent shall receive costs of \$608.84 from the Claimant.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

Non-refundable Filing Fee: \$120.00

Hearing Session Fees: \$400.00 x 2 sessions = \$800.00

Total: \$920.00

1. Claimant shall pay the NASD the sum of \$920.00; however, Claimant is entitled to offset this amount with his \$520.00 hearing session already paid to the NASD. The Claimant shall pay a net sum of \$400.00.

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

Concurring Arbitrator's Signature
Name


Public/Industry

NASD Date of Decision: 2/23/94

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 18 day of February, 1994, before me personally appeared John P. DeLuca known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



John P. DeLuca
NOTARY PUBLIC, STATE OF N.Y.
Qual. in ERIE County
Comm exp 3/30/94

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Concurring Arbitrator's Signature
Name

Public/Industry

Maryann Donahue-Yadon
Maryann Donahue-Yadon

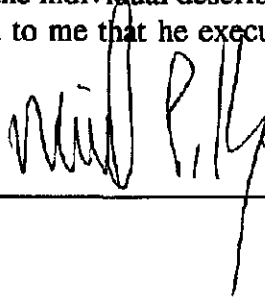
Industry Arbitrator

NASD Date of Decision: 2/23/94

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 16th day of February, 1994, before me personally appeared Maryann Donahue-Yadon known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



Exp. 7-5-94