

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William R. West

92-04198

Name of Respondents

Shearson Lehman Brothers, Inc (n/k/a Lehman Brothers, Inc.).
Edward R. Phillipp, Jr.
William A. Roberts

REPRESENTATION

For Claimant William R. West "William R. West ("Claimant"): John C. Albert, Esq., Crabbe, Brown, Jones, Potts & Schmidt, Columbus, OH.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson"), Edward R. Phillipp, Jr. ("Phillipp") and William A. Roberts ("Roberts"): John E. Jenkins, Associate General Counsel, Lehman Brothers, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed: December 14, 1992

Claimant's Submission Agreement signed on: October 22, 1992

Joint Statement of Answer filed by Respondents Shearson, Phillipp and Roberts (collectively referred to as "Respondents") on: April 23, 1993

Shearson's Submission Agreement signed on: April 23, 1993

Roberts' Submission Agreement signed on: March 18, 1993

Phillipp's Submission Agreement signed on: March 22, 1993

HEARING INFORMATION

Pre-Hearing Conference: April 29, 1994 - one session

Hearing Dates/Sessions: May 3, 1994 - two sessions

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May 4, 1994 - two sessions
May 18, 1994 - one session

Hearing Locations: Columbus Bar Association on May 3 and 4, 1994 and the law offices of Benjamin B. Segel, Esq. on May 18, 1994

CASE SUMMARY

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Claimant alleged that Roberts, Claimant's stockbroker, represented that he was a market analyst specialist and that he had a special stock being offered through Shearson. Claimant alleged, among other things, that based on Roberts representations Claimant authorized the purchase of 5,000 shares of Great American Communications Company ("GACC"). Claimant alleged that he forwarded cash payment for the full amount of the GACC purchase. Claimant alleged that Roberts later contacted Claimant to purchase 10,000 additional shares of GACC. Claimant alleged that he told Roberts he did not want to purchase the additional shares as he did not want to have his account on margin. Claimant alleged, that without his permission, Roberts purchased 10,000 additional shares of GACC. Claimant asserted that this transaction was unauthorized. Claimant alleged that when he discovered the unauthorized purchase, Roberts promised that he would take care of Claimant's account. Claimant alleged that nothing was ever done to correct this unauthorized transaction. Claimant alleged that because he needed funds, he authorized Roberts to sell his shares of Middle South Corporation stock. Claimant alleged that he never received the proceeds from this transaction and later was informed by Roberts that Roberts used the proceeds to cover Claimant's margin balance. Claimant alleged that when he called to complain to the sales manager he was transferred to another stockbroker, Phillipp. Claimant alleged that Phillipp misrepresented to Claimant that Roberts no longer worked there and misrepresented the prospects of GACC. Claimant alleged that Respondents either knew or should have known that GACC was an unsuitable investment. Claimant alleged that Respondents unduly concentrated his portfolio in one high risk stock and failed to diversify his portfolio. Claimant alleged the following wrongful acts against Respondents: breach of contract, breach of fiduciary duty, fraud and misrepresentation and negligence.

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Respondents denied all allegations asserted by Claimant. Respondents maintained, among other things, that Claimant was an experienced investor who authorized the purchase of GACC and held that investment for two years. Respondents maintained that Claimant has now become unhappy with his investment as it has continued to decline in value. Respondents maintained that the purchase of 10,000 shares of GACC was not on margin and that the 10,000 GACC was purchased by Claimant when he liquidated his U.S. Treasury Strips. Respondents maintained

that when Claimant liquidated his Middle South Corporation shares, Shearson sent a check to Claimant from the proceeds of the sale the day after trade date. Respondents maintained that when Claimant called to complain he was referred to Doris Geck, Branch Control Administrator. Respondents maintained that although Claimant had complained to Ms. Geck that he was dissatisfied with Roberts, at no time, did Claimant complain of unauthorized trading in his account. Respondents maintained that Claimant never complained to Phillipp that the GACC purchase was unauthorized nor did Phillipp ever make any misrepresentations regarding Roberts or GACC to Claimant. Respondents maintained that even if Claimant's allegation that 10,000 shares of GACC were purchased without authority were true, Claimant has ratified the trade. Respondent maintained that Claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested: rescission of the purchase of 10,000 shares of GACC, compensatory damages in the amount of \$89,012.12 and punitive damages in the amount of \$50,000, plus attorneys' fees and costs incurred in this arbitration, with interest.

Respondent Phillipp requested that he be dismissed from this proceeding prior to the commencement of the arbitration. Respondents requested that Claimant's claim be dismissed in its entirety and that all costs associated with this matter be assessed to Claimant.

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.

Respondent Phillipp made a Motion to be Dismissed from the proceedings prior to the end of the arbitration. The Panel denied this request and Phillipp remained a party to the proceedings.

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's claim^s against Respondent Edward R. Phillipp are denied in their entirety.
2. That Respondents William Roberts and Shearson are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of \$13,000; inclusive of interest.
3. That Claimant's claim for punitive damages is denied in its entirety.
4. That the parties shall bear their respective costs including attorneys' fees, except for as specifically reflected herein.

FORUM FEES

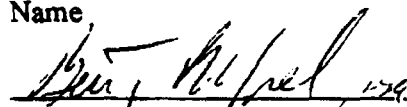
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

5 sessions X \$750 = \$3,750 minus hearing session deposit of 750 = net \$3,000 due.

Forum Fees Assessed Against: Respondents Shearson and Roberts, jointly and severally, so that they are assessed forum fees in the amount of \$3,000.

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

Concurring Arbitrator's Signature
Name


Benjamin B. Segel, Esq.

Public/Industry

Public

NASD DATE OF DECISION: June 10, 1994

1. Claimant's claim against Respondent Edward R. Phillipp are denied in their entirety.
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Robert P. Fogerty

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Barbara D. Lucas, Esq.



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