

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Patrick J. and Betty Tonsor

vs.

92-04214

Name of Respondents

Shearson Lehman Brothers, Inc.
Samuel L. Petro

REPRESENTATION

For Claimants David C. Smith, Esq. of Allman Spry Humphreys Leggett & Howingt, Winston-Salem, North Carolina.

For Respondent Shearson Lehman Brothers, Inc. Victor A. Machinski, Jr., Esq. in-house counsel at Shearson Lehman Brothers.

For Respondent Samuel L. Petro: Fred T. Lowrance, Esq. at Parker, Poe, Adams & Bernstein, Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed: December 15, 1992.

Claimant's Submission Agreement signed on: November 9, 1992.

Statement of Answer filed by Respondent, Shearson Lehman Brothers, Inc. on: March 2, 1993.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: March 1, 1993.

Statement of Answer filed by Respondent Samuel L. Petro on March 3, 1993.

Respondent Samuel L. Petro's Submission Agreement was signed on March 1, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: November 4, 1993 - 2 sessions
 November 5, 1993 - 2 sessions
 January 4, 1994 - 2 sessions
 January 5, 1994 - 2 sessions

Hearing Location: The Guest Quarters in Charlotte, North Carolina.

CASE SUMMARY

Claimants alleged that in 1987 Mr. Tonsor retired from Owens Illinois at which time he received a lump sum severance pay, whereby, a portion of these funds were placed into an IRA account with Respondent Shearson's San Jose office. Claimants further alleged that they then moved to North Carolina and the accounts were transferred to Respondent Shearson's Winston-Salem office under the management of Respondent Petro. Claimants contended that Respondent Petro was aware that the funds were intended for retirement purposes and that Claimants could not risk highly speculative investments given their age, experience and financial means. Claimants alleged that despite this knowledge, immediately after the account was transferred, Respondent Petro caused a significant change in the nature of the investments distinguished by the sale of bonds and blue chip stocks in favor of far more speculative securities. Claimants contend that in February 1990 Respondent Petro instructed Claimants to sell their holding of McDonalds and recommended the purchase of Southland Communications whereby Respondent Petro purchased \$163,961.53 of securities of Southland in a few months. Claimants alleged that on April 5, 1990 they placed \$25,991.34 into their brokerage account and explained to Respondent Petro that these funds should be invested conservatively; however, Respondent Petro, without Claimants' knowledge or approval purchased 600 shares of Southland. Claimants further alleged that shortly thereafter, trading in Southland was discontinued by the SEC resulting in both substantial losses in the IRA and brokerage accounts. Claimants contend that Respondents violated federal securities laws, committed fraud, were negligent and breached their common law duty and contract with Claimants, which caused them to suffer losses in their accounts.

Respondent Shearson Lehman Brothers, Inc. maintained that in its supervision of Respondent Petro, Respondent Shearson acted at all times in accordance with proper brokerage procedure and industry rules and regulations governing the supervision of employees. Respondent Shearson further maintained that based on all of the information supplied to it, Claimants were suitable for all purchases of Southland stock. Respondent Shearson maintained that the Southland stock purchases were made pursuant to a defined strategy with Claimants' full authorization and agreement. Respondent Shearson further maintained that Claimants ratified all the transactions.

Respondent Petro maintained that he explained all the investments volatility and Claimants made all of the investment decisions. Respondent Petro denies he instructed Claimants to sell their McDonalds holdings; Respondent Petro maintained he did recommend Southland; however, he explained the speculative nature of the investment in Southland, and Claimants had full disclosure of and assumed the risks of Southland stock.

RELIEF REQUESTED

Claimants requested rescission to the transactions, \$213,534.13 in compensatory damages, punitive damages.

Respondents requested all claims be dismissed.

AWARD

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

1. Respondent Shearson be and hereby is liable and shall pay Claimants Patrick J. and Betty Tonsor the sum of \$125,000.00 inclusive of interest.
2. Respondent Petro be and hereby is liable and shall pay Claimants Patrick and Betty Tonsor the sum of \$4000.00 inclusive of interest.
3. Respondent Shearson be and hereby is liable for all of Claimants' fees and expenses, including attorneys fees, up to \$10,000.00. Claimants' attorney will provide Respondent an affidavit of fees and expenses.

FORUM FEES

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

8 sessions x 750.00 = 6000.00 less 750.00 hearing sessions deposit = \$5250.00 net due.

Respondent Shearson be and hereby is liable and shall pay the NASD the sum of \$5250.00 to represent forum fees.

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The NASD shall retain the \$200.00 filing fee and \$750.00 hearing session deposit previously paid by Claimant.

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

ARBITRATORS' SIGNATURE

Victor F. Alvarez
Industry Arbitrator

R.I. Dalton, Jr.
Public Arbitrator



John F. Snyder, Esq.
Public Arbitrator

Date of Decision: February 10, 1994

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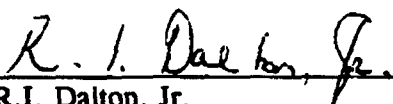
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