

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Alvin Kitlica, Jr.,
Claimants,

v.

No. 92-04342

David Sonne,
Thomas Mahon, and
Shearson Lehman Brothers, Inc.
Respondents.

REPRESENTATION OF PARTIES

Claimant Alvin Kitlica, Jr. ("Claimant") was represented by Michael Salcido, Esq., of the Law Offices of Michael Salcido, Phoenix, Arizona.

Respondents David Sonne, Thomas Mahon and Shearson Lehman Brothers, Inc. ("Respondents") were represented by Jeff Shumway, Esq., of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about December 29, 1992. Claimant's Submission Agreement was signed on October 26, 1992. Claimant's Supplement to Statement of Claim was filed on or about November 10, 1994. Claimant's Reply to Respondents' Response to Supplement to Statement of Claim was filed on or about December 14, 1994.

Respondents' joint Statement of Answer was filed on or about February 26, 1993. Respondents' Submission Agreements were signed on February 2, 1993, March 5, 1993, and February 26, 1993 respectively. Respondents' Response to Claimant's Supplement to Statement of Claim was filed on or about December 14, 1994.

HEARING INFORMATION

Hearing dates: December 13, 1994. One (1) session.
December 14, 1994. Three (3) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that Respondents: Committed securities fraud, in violation of ARS Sections 44-1991 and 13-2301 (D)(4); conducted a scheme or artifice to defraud, in violation of ARS Sections 13-

2310 and 13-2301(D)(4); committed fraud; made unsuitable recommendations and negligent misrepresentations; breached their fiduciary duty and their contract with Claimant; were negligent; and were negligent in their supervision or had failed to supervise the activities in relation to the Claimant. The allegations arose out of a commodities transaction in Claimants account for oil options.

In their joint Answer, Respondents categorically denied each and every material allegation set forth in the Statement of Claim, and further denied any liability of any kind to the Claimant. In addition, Respondents asserted the following defenses in their Response to Claimant's Supplement to Statement of Claim:

1. The claims are barred by the applicable statute of limitations.
2. All of the risks associated with the Claimant's orders were disclosed in writing and through conversations with Respondents. The full disclosure of the risk eliminates any possibility of fraud or misrepresentation and acts as a complete bar to this suit. Also, there was no fiduciary relationship between Claimant and Respondents. Where an investor's account is nondiscretionary, and his broker does not recommend an investment, there is no fiduciary relationship.
3. The Statement of Claim fails to state claims upon which relief may be granted.
4. After insisting upon the oil futures trade, Claimant signed an indemnification letter promising to hold Respondents harmless from any loss. The trade was not executed until after the indemnification letter had been executed.

RELIEF REQUESTED

Claimant requested the following relief:

1. Compensatory damages of \$52,910.80;
2. Trebling the amount specified in No. 1 above, pursuant to ARS Section 13-2314;
3. Punitive damages in an amount to be determined at the hearing in this matter;
4. His costs and attorneys' fees incurred herein, including all NASD and expert witness fees, pursuant to ARS Sections 12-341.01, 13-2314, and 44-2001;
5. Pre and post judgement interest as allowed by law from January 21, 1991, until the award is paid in full; and
6. Such other and further relief as is deemed just and proper.

Respondents requested the Statement of Claim be dismissed in its entirety and that Respondents be awarded their attorneys' fees and costs in defending the claim.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) 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. Claimant's claims against Respondents David Sonne, Thomas Mahon, and Shearson Lehman Brothers, Inc. are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

4 hearing sessions @ \$400.00 per session = \$1,600.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

Additional Forum Fees in the amount of \$400.00 are assessed against the Respondent Shearson Lehman Brothers, Inc..

Additional forum fees in the amount of \$400.00 are assessed against Respondent David Sonne.

NASD ARBITRATION No. 92-04342
AWARD PAGE 4 OF 4

Additional forum fees in the amount of \$400.00 are assessed against Respondent Thomas Mahon.

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

CONCURRING ARBITRATORS

Dated:

Name:

December 21, 1994

Robert S. Mautner /s/
Robert S. Mautner
Presiding Chair
Public Arbitrator

December 19, 1994

John V. Marion /s/
John V. Marian
Public Arbitrator

December 20, 1994

Oran R. Brown /s/
Oran R. Brown
Industry Arbitrator

Date of Service by the NASD: 12/22/94