

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Roy L. McIntosh

vs.

Case #
92-04361

Name of Respondents

Shearson Lehman Brothers, Inc.
Richard Verrochi

REPRESENTATION

For Claimant, Roy L. McIntosh, individually and on behalf the Roy L. McIntosh Professional Association Pension Plan, Thomas H. Tucker, Esq. from the law firm of McGowen, Engel, Tucker, Garrett & Schultz.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Richard Verrochi ("Verrochi"), Gene K. Landy, Esq., from the law firm of Shapiro, Israel & Weiner, P.C.

CASE INFORMATION

Statement of Claim was filed on December 29, 1992.

Claimant's Submission Agreement was signed on December 18, 1992.

Joint Statement of Answer was filed by Respondents on March 1, 1993.

Respondent, Shearson's Submission Agreement was signed on April 6, 1993.

Respondent, Verrochi's Submission Agreement was signed on April 5, 1993.

HEARING INFORMATION

| | | | |
|-------------------------|-------------------|---|------------|
| Hearing Dates/Sessions: | November 30, 1993 | - | 2 Sessions |
| | January 19, 1994 | - | 2 Sessions |
| | January 21, 1993 | - | 2 Sessions |

Hearing Location: NASD's Offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that he is a disabled dentist who retired in 1978 after a stroke caused him to lose the use of his right arm and impaired his ability to speak. Claimant alleges that when his broker, Verrochi changed firms, he transferred his account from Merrill Lynch, Pierce Fenner & Smith to Shearson. Claimant also alleges that when his disability pension ceased, he was largely dependent on his investment for his financial well-being. Claimant also alleges that he did not fully understand how his account was being handled and therefore developed great trust in Verrochi and relied on him not only to direct his investment but also to help him with personal matters such as paying bills.

Claimant further alleges that Verrochi sold one-half of the stocks transferred from Merrill Lynch and used the proceeds to purchase Shearson Special Portfolio Long Term Government Fund, which had a 5% sliding scale back-end load. Claimant states that subsequent deposits into his accounts of \$27,000.00 and a \$391,928.00 proceeds from the sale of real estate were invested into this Fund. Claimant contends that Verrochi placed the proceeds from the sale of the real estate in the Fund despite the fact that he was informed that capital gains tax would be due on April 15, 1987. Claimant contends that as a result, \$76,500.00 was redeemed in April, 1987 to pay capital gains taxes at a cost of \$3,500.00 in redemption fees and \$400.00 in capital losses and that it was unsuitable for Claimant.

Claimant further alleges that Verrochi sold short Claimant's two pension plan accounts valued at approximately \$633,650 while they were at Merrill Lynch and invested \$642,604 of it in the same Fund. Claimant alleges that the concentration of 98% of Claimant net equity in his four accounts into this Fund was unsuitable. Claimant further alleges that Verrochi sold portion of this Fund to purchase Australia and New Zealand Bond Funds sponsored by Shearson and that the sale resulted in 5% back-end load.

Claimant alleges that the management of his accounts demonstrated a pattern of excessive activity. Claimant also alleges that breached his fiduciary and contractual duties to Claimant, committed common law fraud, and violated New Hampshire's blue sky statute, RSA Sections 421-B:3 and B:25. Claimant further alleges that Shearson failed to adequately supervise Verrochi.

Respondents deny the allegations of wrongdoing and assert eight affirmative defenses. Respondents maintain that Claimant was intelligent, competent and mentally alert despite having suffered a stroke. Respondents also maintain that the transactions in Claimant accounts were in accordance with his instructions after all redemption fees and risk information were carefully explained to

Claimant. Respondents further maintain that Verrochi recommended that Claimant set aside a portion of the proceed from the real estate sale to pay the capital gains taxes but Claimant refused to do so and stated that he had funds to pay the taxes.

RELIEF REQUESTED

Claimant requests on award \$242,000.00 in damages, \$15,000.00 in attorney's fees and costs.

Respondents request that the claims be dismissed.

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.

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. All claims against Respondents are denied.
2. The claim for attorney's fees is denied.
3. The claim for costs is denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed and shall be borne equally by the parties.

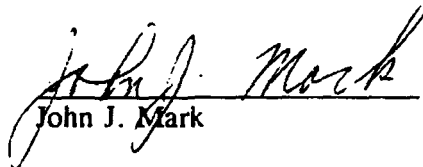
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|-----------------------|------------------------------------|
| Claim Filing Fee: | \$200.00 |
| Hearing Session Fees: | \$750.00 X 6 sessions = \$4,500.00 |
| Total Fees: | \$4,700.00 |

1. Claimant deposited \$850.00 and owes a balance of \$1500.00.
 2. Respondents are jointly and severally assessed \$2,350.00 in forum fees.
- Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

| | | |
|--------------------------------|---|--------------------|
| Peter P. Harrington, Jr., Esq. | - | Public Chairperson |
| John J. Mark | - | Public Panelist |
| Stephen N. Fuller, Esq. | - | Industry Panelist |

Concurring Arbitrator's Signature


John J. Mark

Executed on:
~~Date of Decision:~~ March 16, 1994
Date of Decision: March 22, 1994

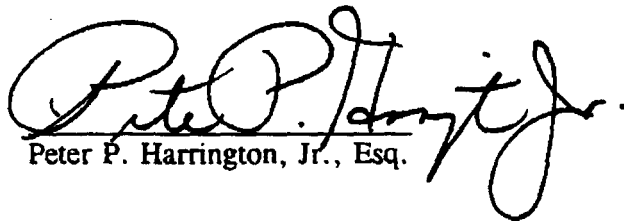
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Peter P. Harrington, Jr., Esq.

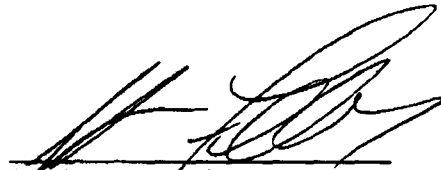
Executed on: March 18 1994
~~Date of Decision~~
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Concurring Arbitrator's Signature


Stephen N. Fuller, Esq.

Executed on:

~~Date of Decision:~~

3/16/94

Date of Decision: March 22, 1994