

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

STEVEN P. BEIN

Claimant

v.

NASD No. 93-155

SHEARSON LEHMAN BROTHERS,
TODD L. PESCAN and
LEE J. BEATTIE

Respondents

Representation

For Claimant: Paul Young of Securities Arbitration Group, Inc., Marina del Ray, CA

For Respondent: Victor Machinski, Esq., of Smith Barney Shearson, New York, N.Y.

Case Information

Statement of Claim filed: January 8, 1993

Claimant's Submission Agreement signed: January 4, 1993:

Statement of Answer filed on: May 11, 1993

Respondents' Submission Agreement signed on: February 18, 1993

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: May 12, 1994/two, May 13, 1994/two

Hearing Location: Beverly Hills, CA

Case Summary

Claimant alleged:

Suitability, breach of contract, misrepresentation, violations of the National Association of Securities Dealers Rules of Fair Practice, failure to follow instructions, breach of fiduciary duty and excessive commissions and margin interest in the sale of TWA high risk bonds. Claimant was retired, 52 years of age when this claim was filed and had a stated objective of maximum safety of principal with a correspondingly low level of risk. He retired when diagnosed with Chronic Fatigue Immune Dysfunction Syndrome (CFIDS). Bein told Respondent Todd Pescan (Pescan) that he could no longer work because of CFIDS. Pescan misrepresented and concealed important and material terms about the investment, and Respondent Lee Beattie (Beattie) failed to provide proper oversight. Respondent Shearson Lehman Hutton (SLH) failed to properly supervise both Pescan and Beattie.

Respondents denied all substantive allegations of the Statement of Claim and alleged:

Claimant first opened his account in 1983 with financial consultant Robert Pacilio and told him he was a practicing dentist in his forties who earned over \$75,000 annually. Bein indicated his willingness to assume risk in order to obtain a higher return. In 1988, Mr. Pacilio left Shearson and Bein's account was reassigned to Pescan. Claimant did not complain about his account during the approximately five years that Mr. Pacilio was his consultant.

Claimant expressly approved and authorized the purchase of those TWA bonds and it was consistent with his stated objectives. Any decline in the value of the bonds was due to unforeseen market fluctuations. Bein told Pescan in or about September 1988 that his primary objective was to obtain the highest possible yield. At no point did Pescan guarantee that the bonds were fully safe.

Relief Requested

Claimant requested:

1. Compensatory damages in an amount to be determined at a future hearing as conforming to proof;
2. Interest at the California legal rate;
3. Reversal of all TWA transaction-related commissions and margin interest charged from September 1988 forward;

4. Punitive damages.

Other Issues Considered and 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim is dismissed;
2. The claim for punitive damages is dismissed;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$600 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Claimant for \$1,200, \$600 of which has been paid as a hearing deposit, leaving \$600,
Respondents, jointly and severally, for \$1,200,

calculated as follows: four hearing sessions at \$600/hearing session, equals \$2,400, minus \$600 already paid by the claimant as a hearing deposit.

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

Arbitration Panel

Name

Public/Industry

Libbe Murez, Esq.

Public

Robert Dunlap

Industry

Philip Burge

Public

Concurring Arbitrators' Signatures

Libbe Murez

Robert B. Dunlap
Robert Dunlap

Philip Burge

Date of Decision:

Served 6/2/94