

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Donald W. Vankirk

93-00252

Name of Respondent(s)

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant Donald W. VanKirk: Richard Brandt, Esq. of Richard K. Brandt and Associates, Sewickley, Pennsylvania.

For Respondent Shearson Lehman Brothers, Inc.: Foster Goldman, Esq. of Klett, Lieber, Rooney and Schorling, Pittsburgh, Pennsylvania.

CASE INFORMATION

Statement of Claim filed: January 22, 1993.

Claimant's Submission Agreement signed on: January 20, 1993.

Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. on: March 15, 1993.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: March 15, 1993.

Amended Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. on: September 13, 1993.

HEARING INFORMATION

Hearing Date/Sessions: September 21, 1993 / Two Sessions

Hearing Location: Westin William Penn Hotel in Pittsburgh, Pennsylvania.

CASE SUMMARY

Claimant alleged at Respondent Shearson Lehman Brothers, Inc. his broker was Scott Huggins and during the course of their dealings, Claimant and Huggins had frequently communicated with regard to the "limit order" Claimant had on his account with regard to his shares of Xerox common stock. Claimant further alleged that Huggins would call Claimant whenever the prices of the stock moved up or down so that the limit order could be changed, with the trade price set for the limit order being 5 points under the price at which the said stock was trading. Claimant alleged that on at least three occasions the price for the application of the limit order as to the Xerox stock was changed, whereby, on those occasions Huggins would call Claimant and advise him to increase or lower the price at which the limit order would apply. Claimant contended that on Monday, January 20, 1992 Claimant called Respondent and was told Mr. Huggins was not in, whereby, the following day Claimant called Respondent both in the morning and afternoon to discuss lowering the strike price at which the limit order would become effective; however, on both such calls Claimant was told Mr. Huggins was not in the office. Claimant alleged that on January 22, 1992 Claimant was informed Mr. Huggins had been let go on January 17, 1992 and his new broker would be Ed Hyjeck; and later that afternoon in a discussion with Emily Fawcett, employee of Respondent, Claimant informed her that he believed he had been "stopped out" at 68 with regard to his Xerox stock, whereby, the next day Mr. Huggins called Claimant and advised him he had been "stopped out" on January 21 and confirmed he was no longer employed by Respondent. Claimant contended that on January 27, 1992 he received confirmation of the trade on January 21, 1992 of the 300 Xerox shares at 68, whereby, Claimant wrote on the confirmation that he was rescinding the transaction and timely mailed the notice to Respondent and on February 5, 1992 Mr. Samuel Robb, Branch Manager of Respondent, called Claimant and acknowledged receipt of Claimant's rescission of the transaction. Claimant alleged that Respondent violated the NASD Rules of Fair Practice by failing to respond to Claimant's written complaint set forth in his rescission, by failing to rescind the trade and by failing to properly supervise its employees.

Respondent maintained that this sale was executed because Claimant had a limit in place. Respondent further maintained that Claimant is a knowledgeable investor and it is indisputable that Claimant had he wished was capable of taking steps to insure that he would not be "stopped out" at 68 and others besides Mr. Huggins could have executed whatever changes he desired. Respondent further maintained Claimant knew others besides Mr. Huggins could have executed whatever changes he desired. Respondent further maintained that the Statement of Claim failed to state a cause of action.

RELIEF REQUESTED

Claimant requested \$9,595.00 in compensatory damages and forum costs.

Respondent requested all claims be denied.

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. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay Claimant Donald W. VanKirk the sum of \$5,717.00 inclusive of interest.
2. Respondent Shearson Lehman Brothers, Inc. be and hereby are liable and shall pay Claimant Donald W. VanKirk the sum of \$1,500.00 to represent forum fee and costs.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are Assessed:

2 sessions x \$200.00 = \$400.00 less \$200.00 hearing session deposit =
\$200.00 net due.

Forum Fees Assessed Against:

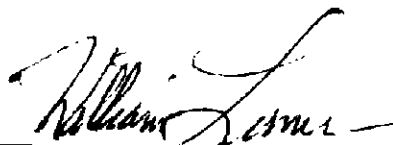
Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay the NASD the sum of \$200.00 to represent forum fees.

The NASD shall retain the \$200.00 hearing session deposit and \$75.00 filing fee previously paid by Claimant.

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

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ARBITRATORS' SIGNATURE

A handwritten signature in cursive script, appearing to read "William Lerner", written over a horizontal line.

William Lerner, Esq.
Public Arbitrator

NASD Date of Decision: November 10, 1993