

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Eugene Simonow and Vera Simonow

93-00299

Name of Respondents

Shearson Lehman Brothers, Inc.
John A. Currie

REPRESENTATION

For Claimants Eugene and Vera Simonow ("Claimants"): Anthony Trogan, Esq. of the law firm of Weisman, Trogan, Young & Schloss located in Birmingham, Michigan.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and John A. Currie ("Currie"): Karen A. Gould, Esq. of the law firm of Hertz, Schram & Saretsky located in Bloomfield Hills, Michigan.

CASE INFORMATION

Statement of Claim filed: January 21, 1993.

Amended Statement of Claim filed: July 23, 1993.

Claimants' Submission Agreement signed on: January 11, 1993.

Joint Statement of Answer filed by Respondents, Shearson Lehman Brothers, Inc. and John A. Currie, on: April 16, 1993.

Respondents' Submission Agreements signed by John P. Bevilacqua of Shearson Lehman Brothers, Inc. on March 16, 1993 and by John A. Currie on April 8, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	February 14, 1994	-	Two sessions
	March 22, 1994	-	Two sessions
	May 17, 1994	-	Two sessions

Hearing Location: American Arbitration Association offices located in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that Respondents recommended the sale of the utility and "blue chip" securities held in their portfolio, and the reinvestment of the sale proceeds in obscure, unknown initial offerings of high risk stock which decreased both in value and in the payment of dividends. Claimants alleged that Respondents misrepresented the equities, were negligent, recommended unsuitable investments, and breached their fiduciary duty.

Initially, Claimants alleged that Respondent Currie advised them to sell their position in Consumers Power Co. on December 9, 1987 just prior to Consumers Power Co.'s appreciation in value. Primarily, Claimants' allegations involved Respondent Currie's advice to reinvest the sale proceeds in MESA Limited Partnership Preference A and HealthVest (common). Claimants alleged that MESA Limited Partnership paid dividends only during 1988 and 1989, and that its market value declined from \$13 to \$2. With regard to HealthVest, Claimants alleged that dividends were paid only during 1988 and half of 1989, while its market value declined from \$19 to \$1. Moreover, Claimants alleged that Respondents never advised them of HealthVest's "buy back" offer of the company's stock at 14-5/8 during 1989. In addition, Claimants alleged that another recommended investment, MFS MultiMarket Income Trust ("MFS") with an initial outlay of approximately \$9,200, declined not only in value from \$11 to \$7, but also in the payment of dividends.

Furthermore, Claimants alleged that Respondents recommended an investment strategy totally inappropriate for themselves as retirees and that Respondents violated the "Know Your Customer Rule" of the NYSE, thereby breaching the fiduciary duty owed to the Claimants.

Respondents maintained that their investment recommendations were proper and suitable. Respondents contended that the Claimants, who initiated the brokerage relationship, were concerned about the risks associated with Consumers Power's construction of a nuclear power plant and directed Respondent Currie to sell the stock. Moreover, Respondents maintained that the Claimants, who were dissatisfied with potential returns offered by utility stocks, requested alternative investments. Respondent Currie suggested several investment vehicles which included MESA and HealthVest, and explained the potential risks and rewards associated with each.

Respondents further contended that MESA Limited Partnership, which is a high yielding income investment and one of the largest publicly traded limited partnerships investing in oil and gas in the United States, offered not only higher income, but also daily liquidity. Further, Respondents maintained that in

December 1987, the Claimants purchased approximately \$20,000 in MESA Limited Partnership and increased their position during April and May of 1988, in the amounts of \$4,000 and \$2,500, respectively.

Respondents maintained that the Claimants purchased and increased their position in HealthVest over a ten-month period covering December 1987 to November 1988, for a total investment of approximately \$20,000, because of its high dividend yield. On several occasions during this period, Respondent Currie suggested alternative investments such as municipal bonds, but purportedly, the Claimants requested investments which would pay greater income. Moreover, Respondents maintained that a year after Claimants' initial purchase in HealthVest, the stock began acting inconsistently. Respondent Currie maintained that he contacted HealthVest's chief financial officer, Elliot Weir, who assured Respondent of the company's financial strength and continued dividends to the investor. In addition, Respondents contend that HealthVest's "buy back" was effected through a national exchange, and that the Claimants were free to sell their shares at 14-5/8 in the open market.

With respect to MFS, Respondents contended that Claimants requested the purchase of this income producing international bond fund even though Respondent Currie disclosed and discussed with them the potential risks of the investment.

Respondents maintained that the Claimants never complained about their account activity. In addition, Respondents maintained that for prosecuting a Section 10(b) claim under the Securities Exchange Act of 1934, the statute of limitations, which is one year from discovery of the facts with the a three-year cap after the alleged violation occurred, had expired. Moreover, Respondents maintained that the Claimants failed to establish their burden of proof that Respondent Currie knew the investments were unsuitable. Respondents contended that a broker's responsibility to his customer concerning a particular trade ceases when the transaction is complete.

Respondent Currie alleged that he fulfilled his duty as an account executive as required by law and the law imposes no continuing duty to keep abreast of financial information which may affect his customers' portfolios nor to inform his customers of developments which could influence their investments. Since the Claimants' account with the Respondents was non-discretionary, Respondents maintained that a fiduciary relationship did not exist as a matter of law.

RELIEF REQUESTED

Claimants requested an award against Respondents for the following:

1. All out-of-pocket damages from investing in companies

recommended by Respondents;

2. Imputed interest calculated on a day of investment to day of return updated balance method;
3. Costs of arbitration including research fees and expenses;
4. Attorneys' fees, including contingent legal fees;
5. Punitive damages in the sum four times the out-of-pocket damages sought; and
6. Equitable relief by way of rescission.

Respondents requested that the arbitration panel find in Respondents' favor as follows:

1. An award of \$0 for Claimants;
2. A dismissal of the claim; and
3. An award of costs and attorneys' fees incurred by Respondents in defending this claim.

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 arbitrators have rendered an opinion and judgement which is annexed hereto, and have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against the Respondents be and hereby are dismissed.
2. All claims for attorneys' fees be and hereby are dismissed.
3. All claims for punitive damages be and hereby are dismissed.
4. All claims for rescission be and hereby are dismissed.