

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

David and Mary Dentler

93-00456

Name of Respondents

Shearson Lehman Brothers, Inc.
Bradley T. Forman

REPRESENTATION

Claimants David and Mary Dentler ("Claimants") were represented by Mark E. Lovett, Esq. of the firm of Hartman, Underhill & Brubaker, 221 East Chestnut Street, Lancaster, PA 17602-2782.

Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Bradley T. Forman ("Forman") herein collectively referred to as "Respondents" were represented by Philip J. Murren, Esq. of the firm of Ball, Skelly, Murren & Connell 511 North Second Street, P.O. Box 1108, Harrisburg, PA 17108

CASE INFORMATION

Statement of Claim filed on: February 5, 1993.
Claimants' Submission Agreement signed on: January 19, 1993.

Respondents' Joint Statement of Answer filed on: April 13, 1993.
Respondents' Amended Joint Statement of Answer filed on: December 28, 1993.

Respondent Forman's Submission Agreement on: April 12, 1993.
Respondent Shearson's Submission Agreement on: March 26, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: March 8, 1994 - 2 sessions
 May 23, 1994 - 3 sessions

Hearing Location: N.A.S.D. Offices, Philadelphia, PA.

CASE SUMMARY

Claimants alleged that Respondent, Forman, recommended an unsuitable investment in the short-selling of Countrywide Credit Industries, Inc. and that Respondent, Shearson, failed to properly oversee the recommendations of its representative by allowing Claimants to invest in such short-selling. As a consequence, Claimants alleged that they lost a total of \$29,389.97 in short-selling.

Respondents alleged that the Claimants were very sophisticated investors and understood the risks of short-sales and that Respondents cannot guarantee success in any particular investment. Respondents alleged that, given the size of Claimants' investment portfolio, the investment of a small percentage in a known speculative investment such as short-selling was appropriate and a risk knowingly assumed by Claimants.

RELIEF REQUESTED

Claimants requested total damages of \$29,389.97 representing the total losses incurred in the short-sales of Countrywide Credit Industries, Inc., including reimbursement of commissions and interest charges.

Respondents made no requests for damages but did request that Claimants' claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondents asserted that Claimants' claim was barred by the one year statute of limitations of federal securities laws. Both sides submitted Briefs on this issue. After hearing argument, the Arbitrators concluded that Claimants were not barred by the statute of limitations because they reasonably relied on the representations made to them by Respondents and that their cause of action did not accrue until more than one month after a meeting with Respondent, Forman, on September

25, 1991. The initial filing with the Philadelphia Stock Exchange on October 20, 1992 was within one year from the date when they should reasonably have been aware that a cause of action existed. The filing with the Philadelphia Stock Exchange was sufficient to toll the statute of limitations because it reasonably placed the Respondents on notice of Claimants' claim.

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. Respondent Forman is liable to Claimants and shall pay the Claimants the sum of \$16,474.00; inclusive of interest.
2. All claims against Respondent Shearson are denied in their entirety.
3. The short-sale investment in Countrywide Credit Industries, Inc. was unsuitable for Claimants given their prior investment history, income and investment objectives. There was, however, no failure to properly oversee on the part of Respondent Shearson, inasmuch as it followed its normal practices with regard to oversight of short-sales and was not aware of the manner by which Respondent, Forman, had suggested the short-sales investment to Claimants.
4. Claimants are not awarded the full amount of their claim because the Arbitrators found that they could have significantly reduced their loss by covering their position completely in November, 1991. Had they done so, their loss would have been only \$14,326.00. Pre-Judgment interest in the amount of \$2,148.00 is allowed on this amount, giving the total award of \$16,474.00.
5. All other claims not specifically addressed are denied in their entirety.

OTHER COSTS

No costs nor attorneys' fees are assessed against any of the parties.

FORUM FEES

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

5 sessions x \$400.00 = \$2,000.00 minus the hearing session
deposit of \$400.00 = 1,600.00

The Forum Fees in the amount of \$1,600.00 are assessed against Respondents Forman and Shearson, jointly and severally.

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

Concurring Arbitrator' Signature

Name

Public/Industry


Eugene Arnold, Jr.

Industry

NASD DATE OF DECISION: June 22, 1994

OTHER COSTS

No costs nor attorneys' fees are assessed against any of the parties.

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Concurring Arbitrator' Signature

Name

Public/Industry


Robert F. Sanville


Public

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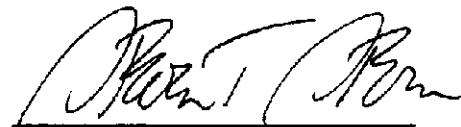
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Concurring Arbitrator' Signature

Name

Public/Industry



Steven T. Stern, Esq.
Chairman

Public

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