

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Estate of Henrietta Tucker

vs.

93-00457

Name of Respondents

Shearson Lehman Brothers, Inc.
Bertram H. Aber

REPRESENTATION

For Claimant Gloria Greenhut, executrix of the Estate of Henrietta Tucker.

For Respondent Shearson Lehman Brothers, Inc.: Mary E. Reisert, Esq. in-house counsel at Shearson Lehman Brothers, Inc.

Respondent Burtram Aber appeared pro se.

CASE INFORMATION

Statement of Claim filed: February 5, 1993.

Claimant's Submission Agreement signed on: October 8, 1992.

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

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: October 13, 1993.

Statement of Answer filed by Burtram Aber on: June 26, 1993.

Respondent Burtram Aber's Submission Agreement signed on: October 13, 1993.

HEARING INFORMATION

Hearing Date/Sessions: October 13, 1993 / Two Sessions

Hearing Location: Whitehall Club in New York, New York.

CASE SUMMARY

Claimant alleged that Henrietta Tucker entrusted her retirement income including Social Security whereby Respondent Aber representative of Respondent Shearson smoothly and calculatingly took advantage of an elderly woman by buying and selling stock without Mrs. Tucker's permission or knowledge. Claimant further alleged that Respondent Aber clearly knew Mrs. Tucker was elderly and infirm when he was entrusted with Mrs. Tucker's savings and there is no doubt that Respondent Aber, by accepting these funds, vested himself as a fiduciary. Claimant further alleged that Respondent Aber churned this account to increase his personal gain from commissions. Claimant further alleged that when Respondent Aber moved to Respondent Shearson she signed the client agreement to keep Mrs. Tucker from financial disaster. Claimant alleges that not once did she receive a copy of the statements and with the approval and cognizance of Respondent Shearson, Respondent Aber sold and traded equities without permission, purchased inappropriate stocks and violated the "know your client" rule.

Respondent Shearson maintained that Claimant traded 13 years at a discount house with Respondent Aber before she transferred her account to Respondent Shearson and during that time Mrs. Tucker never had a complaint concerning the handling of her account. Respondent Shearson maintained that only since Mrs. Tucker's death and the involvement of her daughter, Gloria Greenhut has there been any suggestion of impropriety. Respondent Shearson further maintained that when the Account was at Respondent Shearson, Respondent Aber spoke to Mrs. Tucker, not her daughter, and he executed the orders she directed and approved. Respondent Shearson maintains that the account was handled professionally and in accordance with Mrs. Tucker's direction.

Respondent Aber maintain that Mrs. Tucker never gave him funds to invest; he only followed her investment instructions which involved small sums of money. Respondent Aber further denied any wrongdoing.

RELIEF REQUESTED

Claimant requested \$500,000.00 in damages.

Respondent Shearson requested all claims dismissed and costs and attorneys fees.

Respondent Aber requested all claims be dismissed and costs and attorneys fees.

AWARD

- 1) All claims be and hereby are dismissed in their entirety.
- 2) Each party shall bear their own costs including attorneys fees.

FORUM FEES

Pursuant to Section 43C of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions x \$750.00 = \$1,500.00 less \$750.00

hearing session deposit = \$750.00 net due.


Claimant be and hereby is liable and shall pay the sum of \$750.00 to NASD as forum fees.

The NASD shall retain the \$200.00 filing fee and \$750.00 hearing session deposit previously paid by Claimant.

ARBITRATORS' SIGNATURES

Joseph J. Arata, Esq.
Public Arbitrator

Melvin Lyon
Public Arbitrator


Christopher D. Cavuoti, Esq.
Industry Arbitrator

Date of Decision: Febraary 2, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Joseph J. Arata, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Melvin Lyon** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this *12th* day of *January* , 199^{*4*}*8*, before me personally appeared **Christopher D. Cavuoti, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Evelyn Rodriguez-Chong

EVELYN RODRIGUEZ CHONG
Notary Public, State of New York
No. 41-6010608
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 26, 1999

ARBITRATORS' SIGNATURES

Joseph J. Arata, Esq.
Public Arbitrator

Melvin Lyon

Melvin Lyon
Public Arbitrator

Christopher D. Cavuoti, Esq.
Industry Arbitrator

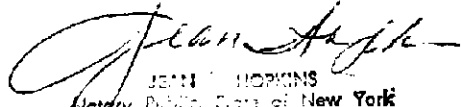
Date of Decision: February 2, 1994

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *29* day of *NOVEMBER*, 1993, before me personally appeared **Joseph J. Arata, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


JEAN L. HOPKINS
Notary Public, State of New York
No. 414452689
Qualified in Queens County
Certificate filed in New York County
Commission Expires *5-31-95*

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Melvin Lyon** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Christopher D. Cavuoti, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.
