

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration BetweenName of Claimant

James H. Sullivan et al.

Vs.

AWARD

Case #93-00604

Name of RespondentsShearson Lehman Brothers, Inc.  
Charles C. Kerl

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 18, 1993, Claimant James H. Sullivan by and through his counsel Gregory L. Wilmes of Briol & Wilmes, Minneapolis, MN. alleged that in 1984 he set up a retirement trust known as the James H. Sullivan Retirement Plan and Trust, and in 1985 he turned over management of his retirement plan to Respondent Charles C. Kerl, registered representative for Respondent Shearson Lehman Brothers, Inc. Claimant further alleged that when he opened his retirement account at Respondent Shearson Lehman Brothers, Inc., he explained that his investment goals were extremely conservative and directed towards preservation of capital for his retirement which was just about 5 to 8 years away, whereby, he told Respondent Charles C. Kerl that he did not want anything risky or any limited partnerships. Claimant further alleged that he gave Respondent Charles C. Kerl "carte blanche" to use his expertise as a financial consultant; however, Claimant's trust was badly misplaced. Claimant contended that in July, 1987, Respondent Charles C. Kerl put \$17,000. in two risky, tax motivated and highly unsuitable limited partnerships Balcro and Shurgard, which Respondent Charles C. Kerl represented were solidly conservative investments that would appreciate while earning 6% per year; however these investments were highly unsuitable. Claimant further contended that he believes he did not receive

prospectuses for the Balcor or Shurgard partnerships when he purchased them and did not discover the unsuitability of the investments earlier because the account statements indicated that partnerships were being carried at their purchase price rather than market value. Claimant asserted that Respondent Charles C. Kerl had a strong financial motive to push the limited partnership because Respondent Shearson Lehman Brothers, Inc. received 7.5% commissions for selling those partnerships. Claimant further asserted that Respondents breached their fiduciary duty to Claimant, violated Minnesota State Securities laws, committed fraud, were negligent and violated other state, NASD and New York Stock Exchange regulations.

Respondents, Shearson Lehman Brothers, Inc. and Charles C. Kerl By and through their in-house counsel John P. Bevilacqua, Esq., maintained that Respondent Charles C. Kerl recommendations were clearly within the boundaries of Claimant James H. Sullivan's investment objective of "appreciation with safety". Respondents further maintained that at no time did they ever have discretionary authorization over Claimant's account and no decisions were made without Claimant's approval, and under no circumstances were any purchases made without Claimant's authorization. Respondents contended that the Shurgard and Balcor prospectuses were furnished to Claimant at the time of the investments, and the prospectuses contained numerous disclosures concerning the responsibilities of a limited partner. Respondents further contended that the claim has no merit and should be dismissed.

#### **RELIEF REQUESTED**

Claimant, James H. Sullivan requested the sum of \$7,468.94 in actual damages together with attorney's fees in the amount of \$2,500.00 and interest plus costs in the amount of \$50.00 and reimbursement of the \$150.00 NASD filing fee.

Respondents, Shearson Lehman Brothers, Inc. and Charles C. Kerl requested the claim be dismissed in its entirety and that Respondents be awarded costs, including reasonable attorneys' fees and costs of suit incurred.

#### **AWARD**

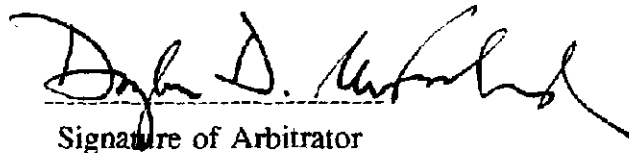
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, DOUGLAS D. McFARLAND, ESQ., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on february 12, 1993 and by the Respondents on April 13, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant James H. Sullivan against Respondents Shearson Lehman Brothers Inc. and Charles C. Kerl are dismissed.
2. The parties shall bear their respective costs, including attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of securities Dealers, Inc. by the Claimant James H. Sullivan shall be retained by the NASD.

**AFFIRMATION**

I, DOUGLAS D. McFARLAND, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

Date of Decision: October 18, 1993

DATED BY THE NASD, INC.: October 25, 1993