

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Ruth B. Hoehn

No. 93-01027

Name of Respondents

Shearson Lehman Brothers, Inc.
James Lepow

REPRESENTATION OF PARTIES

For Claimant: Ardner R. Cheshire, Jr., Esq., of McEvoy, Daniels, Hollowell and Cheshire, Tucson, Arizona.

For Respondent Shearson Lehman Brothers, Inc.: J. Emery Barker, Esq., of Mesch, Clark and Rothschild, Tucson, Arizona.

For Respondent James Lepow: Gary Dukarich, Esq., Tucson, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March , 1993.

Claimants' Submission Agreement was signed on March 10, 1993.

Respondent Shearson Lehman Brothers, Inc.'s Statement of Answer was filed on or about May 26, 1993.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement was signed on July 22, 1993.

Respondent James Lepow's Statement of Answer was filed on or about June 1, 1993.

Respondent James Lepow's Submission Agreement was signed on May 26, 1993.

HEARING INFORMATION

Pre-Hearing conference date: February , 1994. One (1) session.

Hearing dates: March 24, 1994. Two (2) sessions.
March 25, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant, Ruth B. Hoehn ("Claimant") alleged that Respondents, Shearson Lehman Brothers, Inc.'s ("SLB") and James Lepow's ("Lepow") conduct constituted: Negligence; a failure to supervise; a breach of fiduciary duty; fraud; breach of the Rules of the NASD and NYSE; a breach of contract; and a violation of Arizona Revised Statutes, Sections 44-1991, et. seq., 44-1521, et seq., 13-2301, et seq., and 13-2314, et seq. The allegations arose out of transactions in the Mendik Real Estate Limited Partnership and the Lepercq Corporate Income Fund Limited Partnership.

In its Answer, SLB, unless specifically admitted therein, denied each and every allegation contained in the Statement of Claim. In addition, SLB affirmatively alleged that: The Lepercq information had been furnished to Claimant's son-in-law for his independent review prior to Claimant's acquisition of Lepercq after Claimant's son-in-law had approved of the purchase; the type of investment and the holdings of each of the partnerships had been fully disclosed to Claimant and her son-in-law; and risk had been discussed with the Claimant in detail and that Claimant and her son-in-law independently evaluated the risk of each of the investments in question. Further, SLB made the following affirmative defenses:

1. The brokerage agreement between the parties provided that the laws of the State of New York would govern all aspects of the legal relationship between Claimant and SLB, including all rights, duties and remedies, that pursuant to the laws of the State of New York punitive and racketeering damages are not available to Claimant and that all such claims made by Claimant should be dismissed and Claimant should take nothing thereby.
2. SLB alleges that all of Claimant's claims are barred by the statutes of limitation of the United States of America, the State of New York and the State of Arizona, that all claims of the Claimant should be dismissed and that Claimant should take nothing thereby.
3. Claimant's claims are barred by laches.

For his Answer, Lepow denied the allegations contained in the Statement of Claim. In addition, Lepow asserted that: Claimant had previously purchased partnerships from Prudential-Bache with disappointing results; Lepow had presented Claimant with several investment possibilities that she considered and rejected; Claimant did not rely on Lepow's representations in her decision to purchase Mendik or Lepercq; at no time did Lepow guarantee to Claimant the results of any investment.

RELIEF REQUESTED

Claimant requested recovery by way of rescission and damages as follows:

1. \$58,975.00 rescission of the Mendik and Lepercq limited partnerships.
2. Prejudgment interest on the amount of each limited partnership investment at the rate of 10% per annum from the day of purchase, less any monies received from these investments prior to sale or rescission.
3. Punitive damages in an amount necessary to punish Respondents for past bad acts and to deter it from similar conduct in the future.
4. Treble damages pursuant to Arizona's RICO statute.
5. Attorneys' fees, costs, and expenses of this arbitration.

SLB requested dismiss all claims of Claimant, that Claimant take nothing thereby, that SLB be awarded a decision in its favor together with its costs and reasonable attorneys' fees incurred in connection with these proceedings.

Lepow requested that the Claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

A Motion for Summary Decision was made by Claimant upon conclusion of his examination of Respondent Lepow. After hearing argument from all parties, and deliberation, the motion was denied.

The parties have agreed that the Award in this matter may be executed by 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 decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's, Ruth B. Hoehn's, request for rescission of the Mendik Real Estate Limited Partnership ("Mendik") in the amount of \$34,000.00 and in the Lepercq Income Fund Limited Partnership ("Lepercq") in the amount of \$24,975.00 is granted. The rescission award shall be reduced by the amount of distributions received by the Claimant, which are \$1,586.00 for Mendik and \$9,776.00 for Lepercq. Respondents Shearson Lehman Brothers, Inc.

and James Lepow are jointly and severally liable for, and shall pay to the Claimant, Ruth B. Hoehn the sum of \$32,414.00 for Mendik and \$15,199.00 for Lepercq upon Claimant's tender of her interest in the limited partnership units. Claimant must tender her interest in the limited partnership units within 30 days after receipt of this award.

2. Claimant's request for interest from the date of investment is denied. However, Claimant will be entitled to interest at the rate of 10% per annum from the date of tender of the units to the date that rescission is paid by the Respondents.

3. Claimant's claims for punitive damages and RICO damages are denied and dismissed with prejudice.

OTHER COSTS

1. Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

2. Respondents, Shearson Lehman Brothers, Inc. and James Lepow are jointly and severally liable for, and shall pay to Claimant, Ruth B. Hoehn, the sum of \$12,500.00 as satisfaction of her request for attorneys' fees.

3. Each party shall bear the cost of the forum fees incurred in this arbitration equally.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

1 pre-hearing conference sessions x \$300.00 = \$300.00

4 hearing sessions x \$750.00 = \$3,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall RETAIN the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$350.00 are assessed against the Claimant.

Additional forum fees in the amount of \$1,100.00 are assessed against Respondent Shearson Lehman Brothers, Inc.

Additional forum fees in the amount of \$1,100.00 are assessed against Respondent James Lepow.

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

CONCURRING ARBITRATORS

Dated:

Name:

April 26, 1994

Warren C. Kotzman/s/
Warren C. Kotzmann, Esq.
Presiding Chair
Public Arbitrator

April 20, 1994

William B. Thomas/s/
William B. Thomas
Public Arbitrator

April 19, 1994

Paul L. Solomon/s/
Paul L. Solomon
Industry Arbitrator

Date of Service by the NASD: 4-29-94