

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Herbert D. Sturman and Raymond Shainberg,
Co-Executors of the Estate of Louis Sturman,
Claimants.

v.

No. 93-01218

Shearson Lehman Brothers, Inc.,
W. Jack Hines, Jr., and
James D. Siegfried,

Respondents.

REPRESENTATION OF PARTIES

J. Alan Hanover, Esq., and Donald S. Holm, III, Esq., of Hanover, Walsh, Jalenak & Blair, Memphis, Tennessee, represented Herbert D. Sturman and Raymond Shainberg, Co-Executors of the Estate of Louis Sturman ("Claimants").

Harry T. Walters, Esq., Senior Vice President and Assistant General Counsel, Smith Barney Shearson, Inc., New York, New York, represented Shearson Lehman Brothers, Inc., W. Jackson Hines, Jr., and James D. Siegfried ("Respondents").

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 26, 1993.

Claimant's Submission Agreements were signed on March 16 and May 27, 1993.

Respondents' joint Answer to the Statement of Claim was filed on or about June 15, 1993.

The NASD does not have Submission Agreements on file for the Respondents.

HEARING INFORMATION

Pre-hearing Conference date:	January 19, 1994. One (1) session.
Hearing dates:	April 19, 1994. Two (2) sessions.
	April 20, 1994. Two (2) sessions.
	April 21, 1994. Two (2) sessions.

Hearing Location: Memphis, Tennessee

CASE SUMMARY

Claimants alleged that Louis Sturman was incompetent and did not have the capacity to handle or manage his affairs prior to, and at the time of the acts of the Respondents at issue in this arbitration, and that this fact was known to the Respondents. Claimants further alleged that Respondents: Should have refused to accept any of the trades made while Mr. Sturman was incompetent, and that Respondents failed to use reasonable care in dealing with Mr. Sturman in good faith when they knew or should have known of his incompetence; allowed unsuitable transactions to be made in Mr. Sturman's account and that the transactions amounted to an improper and unlawful concentration of securities; breached their fiduciary duty to Mr. Sturman; violated Rule 405 of the New York Stock Exchange; violated Article III, Section 2 of the National Association of Securities Dealers Rules of Fair Practice; violated Rule 10b-5 of the Securities Exchange Commission; and committed gross and wanton negligence. Claimants also contended that Shearson Lehman Brothers, Inc. and W. Jackson Hines failed to supervise James D. Siegfried's handling of Mr. Sturman's account and the account itself. The allegations arose out of transactions in IBM common stock, on margin, over a period from February 6, 1991 to October 18, 1991.

In their Answer, Respondents denied all allegations of wrongdoing contained in the Statement of Claim, and denied that they were liable to the Claimants in any amount. In addition, Respondents asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted.
2. Sturman was aware and was specifically informed of the risks of purchasing stock on margin and is estopped from asserting this claim by virtue of his assumption of the risk.
3. Respondents did not breach any duty that they owed to Sturman.
4. Respondents did not have the requisite intent, knowledge or scienter to violate the securities laws or to commit fraud.
5. The losses complained of were caused by market conditions and not by any culpable conduct by Respondents.
6. The activity complained of has been approved and ratified, or the claims are barred by principles of estoppel, waiver, and acquiescence.
7. Respondents followed the instructions of Mr. Sturman in all relevant respects.

RELIEF REQUESTED

Claimants requested recovery of \$2,444,390.00 plus interest and costs of this action, and punitive damages.

Respondents requested that the Statement of Claim be dismissed and that the costs and attorneys fees be assessed against the Estate.

OTHER ISSUES CONSIDERED & DECIDED

Respondents did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, appeared and testified at the hearing and are therefore bound by the determination of the panel on all issues submitted.

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 original(s) remain on file with the NASD.

The record in this matter was closed as of June 2, 1994.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents W. Jackson Hines, Jr., and James D. Siegfried are, and each of them, denied and dismissed with prejudice.
2. Claimant's claims for punitive damages and attorneys' fees are, and each of them, denied and dismissed with prejudice.
3. Respondent Shearson Lehman Brothers, Inc. is liable for, and shall pay to the Claimant, the Estate of Louis Sturman, the sum of \$220,900.00 as satisfaction of its claims made herein.

OTHER COSTS

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

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 session @ \$300.00 per session = \$300.00

5 hearing sessions @ \$1,000.00 per session = \$5,000.00

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable filing fee in the amount of \$250.00, and shall **RETAIN** the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional Forum Fees in the amount of \$1,650.00 are assessed against the Claimant.

Additional Forum Fees in the amount of \$2,650.00 are assessed against Respondent Shearson Lehman Brothers, Inc.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 6, 1994

Fred M. Ridolphi, Jr./s/
Fred M. Ridolphi, Jr.
Presiding Chair
Public Arbitrator

David E. Scott
Public Arbitrator

June 3, 1994

John Thomas Deutsch/s/
John Thomas Deutsch
Industry Arbitrator

Date of Service by the NASD: 6-13-94