

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Dr. Mark Perrino & Karin Nyenstad

93-01343

Name of Respondents

Shearson Lehman Brothers, Inc.
Karen Friedman

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 5, 1993, Claimants Mark Perrino and Karin Nyenstad, who appeared Pro Se, alleged that in 1991 when they began to accumulate some savings, they opened a Shearson Financial Management Account with Respondent Shearson Lehman Brothers, Inc. and subsequently in January, 1992 they spoke with Respondent Karen Friedman, Financial Consultant whereby they told her they knew very little about the financial markets and wanted conservative investments, for several reasons: they did not have secure, full-time jobs with benefits; nor did they have pension plans, IRA's, annuities, or life insurance; they rented their apartment and had no fixed assets, at which time, Claimants were considering the purchase of a house or co-op and would need a large portion of their saving to be available for a down payment. Claimants further alleged that Respondent Karen Friedman made three unsuitable recommendations in the purchases of Datascope Corporation, RAC Income Fund and Guinness. Claimants contended that Respondent Karen Friedman's advise to make investments in these securities were entirely unsuitable for their financial background, circumstances, needs, and goals considering Claimants' limited knowledge of the financial markets; their modest assets; their lack of retirement provisions or other long-term savings plans or investments and their desire to purchase a home in the near future, and their subsequent need for a cash down payment, in addition to their tolerance for risk. Claimants further contended that Respondent Karen Friedman recommended that they place \$36,000.00 or 80% of their assets, in fluctuating securities trading on stock-exchanges in an uncertain economic climate, at a time when Claimants needed most of the money to be available to them. Claimants asserted that Respondent Karen Friedman made these recommendations without furnishing any rational basis of how the stocks fit their circumstances and financial goals

whereby Respondent Karen Friedman either did not know the character of the securities that she recommended to them and their effect on Claimants' financial objectives or she willfully disregarded her knowledge of it. Claimants further asserted that Respondent Karen Friedman urged them very strongly to hold these investments that were falling in value when Claimants repeatedly told her they would rather take a small loss than risk losing a great deal more. Claimants argued that Respondent Karen Friedman deliberately misled them in regard to certain details, and was professionally irresponsible in relation to their financial needs, in addition to Respondent Shearson Lehman Brothers, Inc. failure to rectify the problem, caused them to incur losses.

Respondents Shearson Lehman Brothers, Inc. and Karen Friedman by and through their in-house counsel Ann Parry, Esq., maintained that in January, 1991 Claimants Mark Perrino and Karin Nyenstad opened an account and they both work in the building which houses the branch, which is specifically designated to service the accounts of employees of the firm whereby during 1991, Claimants purchased three mutual funds. Respondents further maintained that in January 1992, Claimants, having decided that the return on these funds was too modest for their investment goals, telephoned Respondent Karen Friedman, a Financial Consultant in another New York branch office of Respondent Shearson Lehman Brothers, Inc. whereby, the Claimants had sought out the counsel of friends in choosing a new financial consultant; at which time, Claimants asked Respondent Karen Friedman to become their Financial Consultant and transferred their account to the branch where she was employed. Respondents contended that at the time the account was opened, Claimant Mark Perrino told Respondent Karen Friedman that it was his desire to learn more about the workings of the stock market through purchasing individual issues rather than remaining with diversified funds, at which time, Respondent Karen Friedman asked Claimants a variety of questions about their financial means, their investment objectives and their investment experience whereby Claimants indicated that they had \$40,000.00 which they were interested in investing, and that they would like to plan a portfolio which held a variety of types of issues, both for growth and income, within the account. Respondents further contended that Claimants also indicated that they were interested in exploring various levels of risk and accordingly, their investment objectives were noted as both "Appreciation with Risk" and "Income with Safety" on the new account application for this account. Respondents asserted that Claimant Mark Perrino, who directed the trading in the joint account, is an extremely articulate and intelligent man, as witnessed in the crafting of the Statement of Claim, and Claimants were looking to improve on the return they had received on their funds in the two mutual funds they had previously held whereby, at no time did Claimant Mark Perrino inform Respondent Karen Friedman that Claimants had hopes of purchasing real property in the near future, and had Respondent Karen Friedman known that they were planning to call on these funds in the near future, she would have suggested Certificates of Deposit or mutual funds. Respondents further asserted that one of the most basic principles of investment in the stock market is that of risk to return and the concept "growth" positions by definition encompasses an increased risk of the loss that they began to invest with Respondent Karen Friedman, and it was, in fact, the hope of greater return which had led Claimants to choose securities investments in the first instance.

Respondents argued that accordingly, they submit that Claimants, with the benefit of hindsight, seek to recover for losses sustained due to circumstances for which neither a broker-dealer nor its employees should be held liable, thus the claim should be dismissed.

RELIEF REQUESTED

Claimants Mark Perrino and Karin Nyenstad requested \$10,000.00 in damages.

Respondents Shearson Lehman Brothers, Inc. and Karen Friedman requested the claim be dismissed in its entirety and that Respondents be awarded their costs, including attorney's fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George R. Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 31, 1993, by the Respondent Shearson Lehman Brothers, Inc. on May 13, 1993, but not by the Respondent Karen Friedman as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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. Respondents Shearson Lehman Brothers, Inc. and Karen Friedman are jointly and severally liable and shall pay to the Claimants Mark Perrino and Karin Nyenstad the sum of \$4,954.00 in damages.
2. Respondents Shearson Lehman Brothers, Inc. and Karen Friedman are jointly and severally liable and shall pay to the Claimants Mark Perrino and Karin Nyenstad simple interest at the rate of 6% per annum from January 1, 1993 to the date of payment of the award.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Mark Perrino and Karin Nyenstad shall be retained by the NASD, Inc. Respondents Shearson Lehman Brothers, Inc. and Karen Friedman are jointly and severally liable and shall pay to the Claimants the sum of \$75.00, as partial reimbursement.

AFFIRMATION

I, **GEORGE R. FREUND**, 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.



George R. Freund

DATE OF DECISION: August 31, 1993

STATE OF: New York

ss:

COUNTY OF: Hamilton

On this 24TH day of August 1993, before me personally appeared George R. Freund to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

