

**N.A.S.D. AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant**

Richard B. Rosenthal

93-01360

**Name of Respondents**

Shearson Lehman Brothers, Inc.;  
Shearson Lehman Brothers Holdings Inc.;  
Shearson Lehman Brothers Holdings Inc. Employee Benefit  
Plans Committee;  
Trustees of the Shearson Lehman Brothers Holdings Inc.  
Retirement Trust.

**REPRESENTATION**

For Claimant: Richard B. Rosenthal ("Rosenthal") was represented by Richard S. Bender, Esq. of Rosenblum, Goldenhersh, Silverstein & Zafft, P.C., located in St. Louis, Missouri.

For Respondent: Shearson Lehman Brothers Inc.; Shearson Lehman Brothers Holdings Inc.; Shearson Lehman Brothers Holdings Inc. Employee Benefit Plans Committee; and Trustees of the Shearson Lehman Brothers Holdings Inc. Retirement Trust (collectively known as "Shearson") were represented by Matthew V. Bartle, Esq. of Bryan Cave, located in Kansas City, Missouri.

**CASE INFORMATION**

Statement of Claim filed: April 5, 1993.

Claimant's Submission Agreement signed on: March 31, 1993.

Statement of Answer filed by Respondents on: June 1, 1993.

N.A.S.D. Arbitration No. 93-01360  
Award Page 2 of 5

Respondents' Submission Agreement signed on: April 29, 1993 by Rick Apicella, First Vice President, Shearson Lehman Brothers Inc.

### **HEARING INFORMATION**

Pre-Hearing Conference: February 7, 1994 for One (1) session before One (1) arbitrator.  
Hearing Dates/Sessions: February 9, 1994 for Two (2) sessions;  
February 10, 1994 for Two (2) sessions.

Hearing Location: St. Louis, Missouri.

### **CASE SUMMARY**

Claimant Richard B. Rosenthal alleged that Respondents breached their employment agreement by failing to provide him with the pension benefits, including credit for his prior service with a predecessor employer, that was promised to Rosenthal and which induced him to leave his former employer and join Shearson. In addition, Rosenthal alleged that Respondent failed to provide him with a bonus even though Rosenthal had met the requirements for the bonus agreed to at the time he entered Respondent's employment.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Only former Drexel employees hired between April 1, 1989 and December 31, 1989 were allowed credit for prior service with Drexel and brokers employed with firms other than Drexel did not receive credit, including Rosenthal who had been employed by Newhard Cook;
2. No written information of this agreement exists. Rosenthal was 65 years old at hiring, yet alleges that Shearson offered to allow him to become immediately vested in its retirement pension plan, with credit for his prior service with Newhard Cook to September 1981 without any assurance to Shearson that he would continue to work for any length of time;
3. No mention of the vesting in the retirement plan is made in the Shearson Affiliation Report, which contained the terms of the agreement between the parties, even though it does mention the other terms, including the bonus referred to in the Statement of Claim;

N.A.S.D. Arbitration No. 93-01360

Award Page 3 of 5

4. Rosenthal was given credit for the years at Newhard Cook for the purpose of calculating escalation, clubs and similar benefits, and not for the purpose of pension benefits; and
5. Rosenthal was not entitled to the one-month 100 percent lookback production bonus of approximately \$10,000.00 because Rosenthal's two month draw of \$26,000.00 was, as stated in the Affiliation Report, "to be recaptured from the lookback bonus".

Respondents assert as affirmative defenses that:

1. The claims are barred, in whole or in part, by the applicable statute of limitations;
2. There was an accord and satisfaction of any monies owed to Claimant for the lookback bonus; and
3. The Statement of Claim fails to state a claim upon which relief may be granted.

#### RELIEF REQUESTED

Claimant requested entry of an award against Respondents which determined that: (1) Rosenthal had a fully vested accrued retirement benefit under the Plan of approximately 625.00 per month, to which he was entitled to payment from the plan's trustees beginning as of January 20, 1992, in the form of a qualified joint and survivor annuity or, subject to the written consent of Mr. Rosenthal's spouse, such other actuarial equivalent form of benefit provided for under the plan as Rosenthal may elect; (2) Rosenthal is entitled to receive interest on the unpaid pension benefits from the dates as of which such monthly pension benefit payments should have been made to Rosenthal until the date of actual payment to him; (3) Rosenthal is entitled to receive a one-month 100 percent lookback production bonus of approximately \$10,000.00 from Shearson; (4) Rosenthal is entitled to receive interest on the unpaid 100 percent lookback production bonus from the date as of which such production bonus should have been paid to Rosenthal until the date of actual payment; and (5) Rosenthal is entitled to payment for the costs and expenses of filing an administrative claim for benefits with the Employee Benefit Plans Committee and pursuing this matter through arbitration, including attorneys' fees, filing fees and forum fees.

Respondents requested that Rosenthal's claims be denied in their entirety and that an award in favor of Shearson be entered together with the costs associated with this proceeding.

N.A.S.D. Arbitration No. 93-01360  
Award Page 4 of 5

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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.

At hearing, the parties presented two stipulations before the presentation of evidence. Stipulation No. 1, marked Joint Exhibit No. 2, resolved the issue of the look-back bonus. This matter was not presented to the Panel for determination. Stipulation No. 2, marked Joint Exhibit No. 3, set the amount of damages that Rosenthal would be entitled to at the sum of \$66,203.77, exclusive of attorneys' fees and costs.

### AWARD

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

1. Respondent Shearson Lehman Brothers, Inc. is liable for and shall pay to the Claimant Richard B. Rosenthal the sum of \$66,203.70;
2. The claims against Respondents Shearson Lehman Brothers Holdings Inc., Shearson Lehman Brothers Holdings Inc. Employee Benefit Plans Committee, and Trustees of the Shearson Lehman Brothers Holdings Inc. Retirement Trust are hereby dismissed with prejudice and denied in their entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief request not specifically requested is hereby denied.

### FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Prehearing Session before One (1) Arbitrator x \$300.00 per session = \$300.00; Four (4) Hearing Sessions x \$750.00 per sessions = \$3,000.00; Total Forum Fees = \$3,300.00.

N.A.S.D. Arbitration No. 93-01360  
Award Page 5 of 5

The National Association of Securities Dealers, Inc. shall retain the \$500.00 non-refundable filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Richard B. Rosenthal. Claimant Richard B. Rosenthal is liable for and shall pay to the NASD additional forum fees in the sum of \$900.00. Respondent Shearson Lehman Brothers Inc. is liable for and shall pay to the NASD forum fees in the sum of \$1,650.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Edward Ward, Esq.  
Edward Ward, Esq.  
Industry Arbitrator  
Chairperson

June 21, 1994

/s/ Sherie L. Catlett  
Sherie L. Catlett  
Industry Arbitrator

June 21, 1994

/s/ James A. Winkelmann  
James A. Winkelmann  
Industry Arbitrator

June 21, 1994

For NASD Use Only

Date of Decision: 6-24-94