

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ralph and Dorothy Burrell

93-01418

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimants Ralph and Dorothy Burrell ("Claimants"): Anthony V. Trogan, Esq. with the law firm of Weisman, Trogan, Young & Schloss, P.C. located in Birmingham, MI.

For Respondent Shearson Lehman Brothers, Inc ("Respondent"): Marc A. Goldman, Esq. with the law firm of Hertz, Schram & Saretsky, P.C.

CASE INFORMATION

Statement of Claim filed: April 2, 1993.

Claimant's Submission Agreement signed on: March 24, 1993.

Statement of Answer filed by Respondent on: June 8, 1993.

Respondent's Submission Agreement signed on: May 17, 1993

HEARING INFORMATION

Hearing Date/Sessions: April 13, 1994 - Two Sessions

Hearing Location: The hearing was conducted at the Hilton Garden Inn located at 26000 American Drive, Southfield, MI.

CASE SUMMARY

Claimants alleged that on or about February 15, 1988 they opened an account with the Respondent Shearson Lehman Brothers, Inc. Claimants alleged that the account was opened to primarily serve as a liquidity reserve for the claimant's corporations cash flow needs, and was not opened as an "investment" account. Claimants further alleged that their desire not to engage in securities investments was disclosed to the Respondent.

Claimants also alleged that on or about October 11, 1989, Respondent entered an order on behalf of the Claimant's account for the purchase of 3,000 shares of Manufacturers Hanover Corporation stock at \$43.50 a share. Claimants alleged that such a transaction was neither specifically authorized, nor had the claimants given the respondent general authorization to execute trades without prior express approval.

Claimants alleged that Respondent acted as a dealer in this transaction and that Respondent sold the Claimants stock from their own inventory. Claimants further alleged that the transaction in question appeared to be part of a plan for Respondent to dispose of inventory in this particular security.

Claimants contend that they did not immediately receive either oral or written notice of this transaction. Claimants alleged that their first knowledge the Claimants had of the transaction occurred over Thanksgiving holiday, when claimant Mr. Burrell, while on vacation, brought along an accumulation of unopened mail and opened the Respondent's correspondence.

Claimants alleged that upon reading the correspondence they immediately notified the Respondent that an unauthorized trade had been executed. Claimants further alleged that Respondent refused to reverse the alleged unauthorized transaction and that the Respondent insisted that the trade had been authorized or that objection to the trade had not been timely received.

Claimants also alleged that on December 27, 1989 they instructed Respondent to liquidate their position in Manufacturers Hanover Corporation and to close the account. Claimants alleged that due to Respondent's misconduct they lost approximately \$30,000 in their account.

Respondent maintained that claimants fully authorized the transaction in question. Respondent maintained that although claimants initially designated the account as primarily a liquid reserve for claimant's business, Mr. Burrell and Mr. Sendo, a salesperson for the Respondent, met on October 10, 1989 to discuss a different strategy for the claimant's account. Respondent further maintained that at that meeting Mr. Burrell provided authorization to purchase the stock in question.

Respondent also maintained that on or about October 16, 1989, Mr. Burrell and

Mr. Sendo continued their discussion of the Manufacturer's Hanover Corporation stock. Respondent further maintained that Mr. Burrell made reference to the October 16, 1989 post trade conversation and expressed interest in the stock when engaged in a subsequent conversation with Mr. Cole, the Respondent's branch manager.

Respondent also maintained that when claimants opened their account they signed a Client Agreement that stated in part, "Confirmation of orders and statements of my accounts shall be conclusive if not objected to in writing within ten days after mailing by you to me." Respondent further maintained that Claimants failure to read the mail from Respondent for nearly six weeks, correspondence which included a trade confirmation slip, a prospectus, and monthly statement, represented gross negligence on Claimant's behalf. Respondent contends that Claimants failed to raise the alleged unauthorized trade promptly.

Claimant requested the following damages against Respondents: (1) Compensatory damages totaling \$30,000; (2) Interest should be added to this total sum at an appropriate rate (12% is suggested) from October 1989; (3) Additional costs including a \$520 filing fee and \$250 miscellaneous out of pocket costs should also be added to the total sum; and (4) Attorney fees, exemplary damages, and punitive damages.

Respondent requested that the claim be dismissed and that respondent be awarded reasonable costs incurred.

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 original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the Claimants the sum of \$37,000 interest specifically included.

2. All other claims against the Respondent be and hereby are dismissed.
3. All claims against the Respondent for attorney fees be and hereby are dismissed.
4. All claims by Claimants against Respondent for exemplary and punitive damages be and hereby are dismissed.
5. Respondent be and hereby is liable and shall reimburse the Claimant the sum of \$250.00 representing forum fees previously deposited with the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure the panel has determined that the NASD shall retain the \$100.00 non-refundable filing fee and the \$400.00 hearing session deposit.

ARBITRATION PANEL

Barry Goldman, Esq.	-	Chairperson - Public
Robert S. Bick, Esq.	-	Public Panelist
Rose C. Ruble	-	Industry Panelist

Concurring Arbitrators' Signatures
Name

Public/Industry

Robert S. Bick
~~Barry Goldman, Esq.~~

Date of Decision: June 21, 1994

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