

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert M. Goolrick

93-01465

Name of Respondents

Shearson Lehman Brothers, Inc. (n/k/a Lehman Brothers, Inc.)

REPRESENTATION

For Claimant Robert M. Goolrick ("Claimant"): Claimant appeared Pro Se.

For Respondent Shearson Lehman Brothers, Inc. ("Respondent"): John E. Jenkins, Associate General Counsel at Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed: April 12, 1993.

Claimant's Submission Agreement signed on: April 7, 1993.

Respondent filed its Statement of Answer on June 24, 1993.

HEARING INFORMATION

Pre-Hearing Conference: December 6, 1993 - One Session

Hearing Date/Sessions: December 10, 1993 - Three Sessions

Hearing Location: NASD Executive Offices, Washington DC

CASE SUMMARY

Claimant alleged that Respondent is liable to him for losses on his purchase of 3,000 shares of Guinness PLC Ord shares ("shares"), a British Company. Claimant alleged that Respondent through its broker, Michael Higgins, offered Claimant the future opportunity to invest alongside Respondent in "Special Situations" provided that the Claimant would be able to invest at least \$15,000.00 and that Claimant was able to make an immediate decision over the telephone. Claimant alleged that Michael Higgins stated that the shares represented an investment-Grade, low risk investment which traded on the London Stock Exchange at approximately \$10.50 per share and expected a \$16.00 per share price within 12 months. Claimant alleged that the market value of the shares declined steadily and drastically during four and one-half months after September 15, 1992 (trade date) to January 31, 1993, representing a decline of some 35% after the favorable purchase recommendation. Claimant alleged that the forthcoming adverse change in currency exchange rates should have been known or anticipated by the Respondent. Claimant alleged that the Respondent did not have a reasonable basis to recommend the purchases of shares on September 15, 1992 and that Respondent stood in a position of conflict of interest in both recommending the shares for purchase and selling the shares from its own inventory. Claimant alleged that Respondent had a duty to accurately and adequately support its recommendation.

Based upon the above allegations, Claimant contended that misrepresentations and omissions by Respondent's agent, Michael Higgins, violated Sections 12 and 17(a) of the Securities Act of 1933 and Rule 10b-5 of the regulations under the Securities and Exchange Act of 1934; Virginia Securities Act, Code of Virginia Sections 13.1-502 and Section 13.1-522(A); and Common Law Fraud as defined by the Courts of Virginia.

Respondent categorically denied all allegations of wrongdoing alleged by Claimant. Respondent maintained that the basis of its recommendations to buy the shares was that it was a low risk investment, backed by the thorough research of Respondents' Research Department. Respondent maintained that Claimant had knowledge of and assumed risks incident to the investment in his account and any damages suffered by Claimant arose out of such risks. Respondent maintained that Claimant's claims are barred by the applicable Statute of Limitations and by the doctrines of laches, waiver and estoppel. Respondent maintained that it made no misstatements of material fact upon which Claimant detrimentally relied and that the investment was not unsuitable for Claimant. Respondent maintained that Claimant is barred from any recovery because Claimant instructed, directed, authorized, consented to, acquiesced in and/or ratified the transactions in

question and failed to mitigate any damages Claimant may have suffered.

RELIEF REQUESTED

Claimants requested rescissionary damages of the 3,000 shares of Guinness PLC Ord in the amount of \$19,042.41, representing \$15,300.00 cash investment, \$3,242.41 loss from shifting funds from another investment into the Guinness PLC Shares and \$500.00 costs for the arbitration filing fees.

Claimant also requested punitive damages plus costs and reasonable attorney's fees.

Respondent requested that Claimant's claim be dismissed in all respects.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the award in this matter be executed with counterpart copies or that in 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.

All Pre-hearing motions made by the Parties were previously considered and denied. All those rulings are reaffirmed at this time.

Pursuant to the by-laws of the NASD, the Panel determined that Respondent, Shearson Lehman Brothers, Inc. was required to submit to this arbitration, notwithstanding its failure to submit an executed submission agreement. Therefore, the Respondent is bound by the Panel's Ruling and Determination.

The Panel allowed Post-Hearing submissions.

AWARD

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

1. Upon execution of instruments necessary to transfer ownership of the balance remaining of the 3,000 shares of Guinness PLC Ord and cancellation of Claimant's margin loss obligation with Respondent, the

Respondent, Shearson Lehman Brothers, Inc. is liable for and shall pay to Claimant Robert M. Goolrick the sum of \$15,300; exclusive of interest.

2. Claimants request for attorney fees is denied. The parties shall bear their own respective costs except as enumerated herein.
3. Claimant's claim for punitive damages is denied in its entirety.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 Pre Hearing Conference x \$300 = \$300

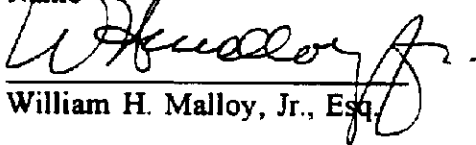
3 Hearing Sessions x \$400.00 = \$1,200.00

Pursuant to Section 43c of the Code, the NASD shall retain Claimant's previously filed hearing session deposit of \$400.00 as well as his claim filing fee of \$100.

The Panel has determined that the forum fees in this matter shall be borne by the Respondent. Respondent shall pay forum fees in the amount of \$1,200.00 to the NASD and Respondent is directed to refund to Claimant his previously filed hearing session fee of \$400 as well as refund to Claimant his claim filing fee of \$100.

Concurring Arbitrator's Signature

Name


William H. Malloy, Jr., Esq.

Public/Industry

Public

NASD Date of Decision: February 10, 1994

Respondent, Shearson Lehman Brothers, Inc. is liable for and shall pay to Claimant Robert M. Goolrick the sum of \$15,300; exclusive of interest.

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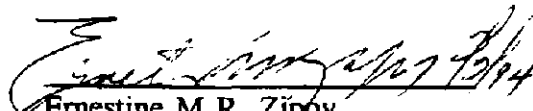
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Concurring Arbitrator's Signature

Name

Public/Industry


Ernestine M.R. Zipoy


Public Arbitrator

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Concurring Arbitrator's Signature

Name

Public/Industry



Carol Corbett

Industry Arbitrator

NASD Date of Decision: February 10, 1994