

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Cecil W. Murray

93-01595

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant: Cecil W. Murray ("Murray") was represented by Anthony V. Trogan, Jr., Esq. of Weisman Trogan Young & Schloss, P.C., located in Birmingham, Michigan.

For Respondent: Shearson Lehman Brothers, Inc. ("Shearson") was represented by Miles D. Hart, Esq. of Hertz, Schram & Saretsky, P.C., located in Bloomfield Hills, Michigan.

CASE INFORMATION

Statement of Claim filed: April 21, 1993.

Claimant's Submission Agreement signed on: April 12, 1993.

Statement of Answer filed by Respondent on: June 21, 1993.

Respondent's Submission Agreement signed on: May 21, 1993 by John P. Bevilacqua, Vice President, Shearson Lehman Brothers, Inc.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: June 13, 1994 for Two (2) sessions.

Hearing Location: Southfield, Michigan

CASE SUMMARY

Claimant Murray alleged that on August 6, 1992, Respondent Shearson failed to execute a standing order to close out 40 IBM puts when the price of IBM common stock reached \$90.00. In addition, Shearson's failure to properly respond and correct the error led to additional losses. Murray specifically alleged that:

1. Several weeks prior to August 6th, Murray requested that his Shearson broker place a standing order to close out 40 IBM options if the price of IBM stock should decrease to \$90.00 per share. The broker recommended not placing the order, but offered to monitor the stock and if the stock reached \$90.00, he would call Murray, or close the option if Murray could not be reached. Murray accepted this recommendation because his broker had faithfully executed similar transactions in the past;
2. On August 7, 1992, Murray attempted to call his broker to get a market update, but was informed that he was on vacation since August 5th. Murray requested the price of IBM and discovered that it had dropped to \$87.00 without his option position being closed. Murray decided to wait until his broker returned to discuss the situation;
3. On August 10th, Murray informed the broker of the problem and requested that his superiors be informed. After doing so, the broker asked Murray to hold the position because the stock was going up and he would sell when it hit \$90.00;
4. The stock did not return to \$90.00. Murray was advised by his attorney that Shearson was responsible for the initial loss, but if he was willing to let them recover the loss by holding the position, he should get a written statement from Shearson accepting the total risk associated with the position until the loss was

recovered;

5. Murray contacted his broker and advised him of his attorney's advice. Murray's broker told him that Shearson would not assume the risk for the open options and that he was not authorized to pay back the loss. Murray was referred to the office manager, who made it clear that would not make good the loss or cover the position until the loss was recovered;

6. Murray closed the position on October 5, 1992 when the stock price had dropped to \$75.75. Murray forwarded a letter to the office manager on November 6, 1992 requesting payment for the losses incurred when the stock went below \$90.00, but Shearson rejected his claim.

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

1. When Murray opened his account in approximately May 1990, Murray informed his broker that he was an experienced investor who regularly read the investment publications and had ready access to a stock quote machine. After opening the account, Murray independently investigated and researched the purchase and sales of options as an investment strategy and received from Shearson two pamphlets, the "Characteristics and Risks of Standardized Options" and "Special Advisory for Uncovered Options". Murray acknowledged that he was aware of the risks of option trading and displayed this knowledge during his conversations with his broker;

2. Murray had previously maintained price targets of \$105, \$100, \$95, and \$93 prior to the \$90 target. Murray specifically declined to place an order to close the positions and did not indicate a desire to sell, but consistently failed to take action when the target prices were reached;

3. On the day he discovered that IBM had fallen to \$87.00, Murray had several options, including speaking to the back-up broker who could have provided additional information or executed an order. Murray could have spoken to the office manager who could have closed the position immediately. Instead, Murray chose to wait to see what the market might do on the chance that the stock rose in value;

3. On August 10, 1992, Murray spoke to his broker, but never closed his IBM option positions. Instead, he stood idly while the price of IBM fell to \$75;

4. Murray, as the owner of a non-discretionary account, was responsible for

directing all trades in his account. Murray never directed Shearson to close his positions and Shearson could not substitute its judgment for the customers and close out the IBM position; and

5. Murray had an affirmative duty to make every reasonable effort to minimize the damages suffered, but failed to do so. Instead, Murray maintained his position to see if IBM would "come back", even after his broker advised him to close the positions.

RELIEF REQUESTED

Claimant requested entry of an award against the Respondent for damages in the sum of \$35,826.00.

Respondent requested that the arbitrators award Murray nothing, and assess costs and attorneys' fees in Shearson's favor.

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.

AWARD

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

1. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$400.00 per hearing session = \$800.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 non-refundable filing fee and the \$400.00 hearing session deposit previously deposited by the Claimant, Cecil W. Murray. Respondent Shearson Lehman Brothers, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$400.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Barry Goldman, Esq.
Barry Goldman, Esq.
Public Arbitrator
Chairperson

August 10, 1994

/s/ Gordon F. Knight, Ph.D.
Gordon F. Knight, Ph.D.
Public Arbitrator

August 9, 1994

/s/ John R. Main
John R. Main
Industry Arbitrator

August 9, 1994

For NASD Use Only
Date of Decision: _____

8/12/94