

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

Betty Burfeindt

AWARD  
93-01661

Name of Respondents

Shearson Lehman Brothers Inc. n/k/a  
Smith Barney Shearson, Inc.  
and Kathy Valentine

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 27, 1993, Claimant Betty Burfeindt, who appeared Pro Se, alleged that Respondent Kathy Valentine, through the Respondent firm Shearson Lehman Brothers Inc., recommended that she purchase two Limited Partnerships, Shearson Beverly Hills Medical Center LP and August All Suites Income LP, which she later discovered were unsuitable investments, since she did not meet the suitability requirements for either investment. The Claimant further alleged that when she questioned Respondent Valentine about the suitability requirements she told her that she did not realize that there were any suitability requirements for the Limited Partnerships and did not know that the Claimant was not qualified. Claimant Burfeindt contended that for these facts and the fact that she was wrongly advised by Respondents Shearson Lehman Brothers Inc. and its agent, she should be compensated for the damages she has suffered due to their wrongdoing.

Respondents Shearson Lehman Brothers Inc. and Kathy Valentine, in a joint Statement of Answer, through their in-house counsel, John P. Bevilacqua, Esq., maintained that the Claimant expressed her investment objectives as moderate growth and current income, and that at the time of the investments the Claimant listed her net worth to be \$200,000, making her eligible for these investments.

The Respondents further maintained that the Claimant owned these investments for nearly six years without complaint, and that the basis for her complaint is her dissatisfaction with the performance of the partnership investments, not any cognizable claim of impropriety of the Respondents. Respondents Shearson Lehman Brothers, Inc. and Kathy Valentine contended that they committed no wrong and should not be held liable in this matter.

#### RELIEF REQUESTED

Claimant Betty Burfeindt requested \$10,000.00 in actual damages.

Respondents Shearson Lehman Brothers, Inc. and Kathy Valentine requested that the claims of the Claimant be dismissed and that they be awarded costs and attorneys' fees.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George S. Howard, Jr., Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 19, 1993, by Respondent Shearson Lehman Brothers, Inc. on June 18, 1993, and by Respondent Kathy Valentine on June 16, 1993.

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. n/k/a Smith Barney Shearson, Inc. and Kathy Valentine are jointly and severally liable and shall pay to Claimant Betty Burfeindt \$5,000.00 in actual damages.
2. Respondents Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson, Inc. and Kathy Valentine are jointly and severally liable and shall pay simple interest on \$2,500.00 at the rate of 7% per annum, from June 24, 1987 to the date of payment of the award, and shall also pay simple interest of 7% per annum on an additional \$2,500.00 from May 26, 1987 to the date of payment of the award.
3. The parties shall bear their respective costs and attorneys' fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, GEORGE HOWARD, ESQ., 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.

  
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Signature of Arbitrator

DATE OF DECISION: May 18, 1994

REPORT OF ARBITRATOR

BURFEINDT v. SHEARSON, ET AL.

NASD ARBITRATION NO. 93-1661

DECISION AND AWARD OF ARBITRATOR

This matter was presented to the undersigned as neutral arbitrator for ruling pursuant to the Rules of Arbitration of the National Association of Securities Dealers ("NASD").

The arbitrator has read and considered the materials presented by both sides. Having considered the matter it is the decision and award of the arbitrator as follows:

1. The arbitrator concludes that the instant investment was not suitable for the claimant, and that the respondent brokerage and registered representative should have, at a minimum, made more substantial disclosures, considered other potentially more appropriate investments and, in all likelihood, should not have recommended the subject investment.
2. While the decision to invest appears to have been the claimant's decision, the arbitrator concludes that the claimant was not given sufficient information upon which to base a truly informed decision.
3. Based on the materials in the record and drawing inferences that appear to be reasonable to the arbitrator, it is concluded that claimant should recover the original investment, less such amounts as are indicated below.
4. Although the claimant has good reason to be dissatisfied with the advice pertaining to the original investment, based on the arbitrator's review of the record, it appears that the claimant was less than reasonably diligent in not attempting to minimize her losses, assuming there was an opportunity to do so. It is therefore the conclusion of the arbitrator that claimant should recover one half of the original investment, together with interest thereon from the date of the original investment at the rate of 7% per annum; provided that there was in fact a market for the subject securities that would have permitted claimant to sell the securities at the time she had lost one half of her investment.