

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Anne P. Nagel

93-01709

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant: Anne P. Nagel ("Nagel") was represented by Walter L. Baumgardner, Esq, of Musilli, Baumgardner, Wagner & Parnell, P.C., located in St. Clair Shores, Michigan.

For Respondent: Shearson Lehman Brothers, Inc. ("Shearson"), now known as Smith Barney Shearson, Inc., was represented by Sean J. Coughlin, Esq., of Smith Barney Shearson, Inc., located in New York, New York.

CASE INFORMATION

Statement of Claim filed: April 29, 1995.

Claimant's Submission Agreement signed on: April 26, 1993.

Statement of Answer and Motion for More Definite Statement of Claim filed by Respondent on: August 4, 1993.

Respondent's Submission Agreement signed on: August 5, 1993 by Ann Parry, Vice President, Shearson Lehman Brothers, Inc., now known as Smith Barney Shearson, Inc.

Claimant's Response to Motion for More Definite Statement of Claim filed: August 19, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: August 14, 1995 for One (1) session; and
August 15, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondent Shearson engaged in acts constituting churning, misrepresentation and the purchase of securities unsuitable given Nagel's lack of sophistication as an investor. Nagel specifically alleged that:

1. Respondent fraudulently misrepresented the value of Claimant's investments until at least 1992, which prevented Nagel from discovering the extent of the fraudulent activity in her account;
2. From the time the account was opened until it was closed, the Respondent engaged in the sale and purchase of securities which had no purpose other than to generate commissions; and
3. Respondent induced Nagel to speculate in stocks which she did not understand and which were unsuitable given Nagel's limited experience in the stock market.

Based upon the above allegations, Claimant asserted that Shearson was guilty of securities fraud and violation of the federal RICO statute.

Respondent denied the material allegations of the Statement of Claim and owing any liability to the Claimant. Respondent asserted several affirmative defenses, including the following:

1. The Claimant failed to state a claim upon which relief can be granted;
2. Claimant was barred from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches because of her failure to complain promptly after receiving confirms and monthly statements;
3. The claims are barred by the applicable statute of limitations;
4. Claimant's demand for punitive damages violates the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and
5. All claims relating to occurrences prior to April 26, 1987 were barred by Section 15 of the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant requested entry of an award against Respondent for the return of all commissions generated; the return of principal lost in the sum of approximately \$45,000.00; the return of all attorneys' fees necessitated by the claim; exemplary or punitive damages due to the totally outrageous conduct of Respondent; triple damages as a result of the violations of the RICO statute; and waiver of all filing fees.

Respondent requested that the Statement of Claim be dismissed and that costs and expenses (including attorneys' fees) incurred by Shearson be awarded to it.

OTHER ISSUES CONSIDERED & DECIDED

Claimant's Response to the Motion for More Definite Statement of Claim responded to the Respondent's concerns and the arbitrators were not required to decide the matter.

Pursuant to a letter dated August 26, 1993, the NASD was informed that Claimant voluntarily dismissed all claims concerning the Stamford Towers L.P. because the partnership was the subject of a completed class action in which the Claimant participated.

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 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 awarded is hereby denied.

OTHER COSTS

The NASD shall retain the \$400.00 postponement fee paid by Respondent Shearson Lehman Brothers, Inc., now known as Smith Barney Shearson, Inc.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$750.00 per session = \$2,250.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$1,050.00 hearing session deposit previously deposited by the Claimant, Anne P. Nagel. Respondent Shearson Lehman Brothers, Inc., now known as Smith Barney Shearson, Inc. is liable for and shall pay to Claimant Anne P. Nagel the sum of \$1,250.00 as reimbursement of the claim filing fee and hearing session deposit previously deposited by the Claimant. In addition, Respondent Shearson Lehman Brothers, Inc., now known as Smith Barney Shearson, Inc. is liable for and shall pay to the NASD the sum of \$1,200.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Carole M. Crosby, Esq.
Carole M. Crosby, Esq.
Public Arbitrator
Chairperson

October 6, 1995

/s/ Scott E. Paye
Scott E. Paye
Public Arbitrator

October 6, 1995

Dissenting Arbitrator's Signature

/s/ Thomas C. Girardot
Thomas C. Girardot
Industry Arbitrator

October 13, 1995

For NASD Use Only

Date of Decision: October 13, 1995