

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

George B. Hopping

93-01866

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
Donald James Rentz

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**REPRESENTATION**

For Claimant: Peter J. Karabas, Esq. of Abramson & Fox, Chicago, IL.

For Respondents Shearson Lehman Brothers, Inc. and Donald James Rentz: Linda R. Alpert, Esq. of Smith Barney Shearson, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed: May 7, 1993.

Claimant's Submission Agreement signed on: April 14, 1993.

Amended Statement of Claim filed: November 22, 1993.

Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Donald J. Rentz ("Rentz") on: September 7, 1993.

Respondent Shearson's Submission Agreement signed on: September 3, 1993.

Respondent Rentz' Submission Agreement signed on: September 3, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: May 17, 1994 / Two Sessions

Hearing Location: American Arbitration Association  
One Towne Square - Suite 1600  
Oakland Towne Square  
Southfield, MI 48076

### CASE SUMMARY

Claimant alleged that in the Spring of 1991 Claimant opened an account with Respondent Shearson after a cold call from Respondent Rentz. Claimant further alleged that at the time the account was opened Claimant informed Respondents of his investment objectives of safety and income. Claimant then alleged that in the Spring of 1992 Respondents Shearson and Rentz recommended that Claimant sell 20 IBM January 85 puts and that the trades were executed on May 4, 1992 and May 6, 1992. Claimant next alleged that Respondents failed to properly disclose or explain the risks inherent in selling uncovered puts, even though IBM stock was technically weak at that time, and that they failed to disclose to Claimant the extent of any profits and losses which could be realized on the trade. Claimant then alleged that the advice and recommendation placed Claimant in an extremely vulnerable position and exposed Claimant to virtually unlimited losses. Claimant then alleged that on October 28, 1992, after Respondent Rentz had left the employ of Respondent Shearson, Claimant liquidated the puts on the advice of the account executive who replaced Rentz. Claimant alleged that the sale of the IBM puts was an unsuitable investment given Claimant's investment objectives and that Respondents breached their fiduciary duty to Claimant and their duty not to act in a negligent manner in handling Claimant's account. Claimant further alleged that Respondents violated Sections 1 and 2 of Article III of the NASD Rules of Fair Practice and that Respondents acted in violation of the Michigan Consumer Protection Act. Claimant also alleged Respondents violated the principles of common law fraud. Claimant further alleged that Respondent Shearson violated its duty to supervise Respondent Rentz.

Respondents maintained that the recommendation to sell IBM January 85 met Claimant's investment objectives, the recommendation was made in good faith and that Claimant was made aware of the risks involved. Respondents further maintained that Claimant's trading activities indicated to Respondents that Claimant's objectives were aggressive and that the Claimant's trading record shows a number of purchases of speculative securities. Respondents also maintained that Claimant was a sophisticated investor who read financial publications and had accounts with other brokerage firms. Respondents maintained that Rentz thoroughly discussed the risks and benefits of selling IBM puts and that Claimant received an option risk disclosure prospectus prior to his

first option trade in Eastman Kodak calls in November 1991. Respondents further asserted that at the time of the trade IBM stock was not weak but rather was steadily increasing in value. Respondents maintained that Claimant received confirmations of the put sales and monthly statements showing the value of his position and that Claimant continued to make trades in his account and meet margin calls. Respondents maintained that by accepting the confirmations and monthly statements, and by continuing trading activity, Claimant ratified all transactions as within his stated investment goals. Respondents further maintained that Rentz had several discussions with Claimant concerning the IBM puts and gave claimant three possible courses of action but that Claimant decided to wait. Respondents maintained that no guarantees or promises were made to Claimant by Rentz or Shearson.

Respondents further maintained that they did no wrong and as such Claimant is not entitled to compensatory or punitive damages. Respondents also maintained that Claimant is not entitled to punitive damages or attorney's fees and that the Michigan Consumer Protection Act does not apply to the sale of securities. Finally, Respondents maintained that Claimant is not entitled to margin interest as Claimant signed a margin agreement and willingly paid all margin calls and Claimant is not entitled to a "reasonable return" on his investment since the claim is speculative.

Respondents asserted as affirmative defenses the following: (1) the statement of claim failed to state a claim for which relief could be granted and, (2) the Claimant's trades were appropriately entered and confirmed within industry, legal and regulatory requirements and, (3) the Claimant was barred from recovery because Claimant authorized, approved or ratified the trades and Claimant failed to timely complain and, (4) the Claimant was barred from recovery by the doctrines of laches, waiver and estoppel and, (5) the Claimant's losses were a result of Claimant's decisions and Claimant's failure to mitigate and, (6) the Claimant's losses were a result of the actions and or negligence of Claimant or third parties or superseding events beyond the control of Respondents and, (7) the Claimant assumed the risks and, (8) there was no breach of fiduciary duty by Respondents and, (9) there was no cause of action for breach of NASD Rules.

#### RELIEF REQUESTED

Claimant requested: Damages in the amount of \$34,309.41 in compensation for Claimant's losses on the IBM puts plus the margin interest charged. Claimant also requested additional damages in an amount equal to a reasonable return on Claimant's investment which amount would be determined at the hearing. Claimant also requested his filing fees and attorney's fees. Claimant further

requested punitive damages in the amount of \$50,000.

Respondents requested: That Claimant's claims be dismissed.

### **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) Respondents are hereby found liable to Claimant, jointly and severally, in the amount of \$16,670.00, interest specifically excluded, in compensatory damages.
- (2) Claimant's claim for damages in an amount equal to the reasonable return on Claimant's investment is denied.
- (2) The Claimant's claim for punitive damages is denied.
- (3) Each party shall bear their respective costs including attorney's fees.
- (4) Respondents be and hereby are liable jointly and severally and shall pay to Claimant the sum of \$650.00 to reimburse Claimant for Claimant's claim filing fee and hearing session deposit paid.

### **FORUM FEES**

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

2 sessions X \$500 = \$1,000 minus hearing session deposit of \$500 = net \$500 due.

Forum fees Assessed Against:

1. Respondents Shearson Lehman Brothers, Inc. and Donald J. Rentz are assessed \$500.00 jointly and severally which represents the remaining balance of the forum fees. Respondents are hereby liable and shall pay to the NASD the sum of \$500.

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

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Concurring Arbitrators' Signatures

Name

Public Chairman

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Marc E. Thomas, Esq.

Name

Industry Panelist

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*Kenneth A. Madsen*  
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Name

Public Panelist

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Mark D. Sherbow, Esq.

Date of Decision: August 24, 1994

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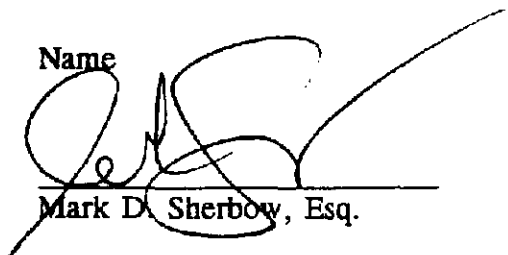
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