

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Farra M. Alford

93-01951

Name of Respondents

Shearson Lehman Brothers, Inc.  
Arthur J. Robbins

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**REPRESENTATION**

Claimant Farra M. Alford ("Alford") was represented at the hearing by Charles C. Mihalek, Esq. of Lexington, Kentucky.

Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Arthur J. Robbins ("Robbins") were represented at the hearing by David G. Russell, Esq. of Parker Hudson Rayner Dobbs of Atlanta, Georgia.

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimant Alford on May 14, 1993. The Uniform Submission Agreement was signed by Alford on May 12, 1993.

A joint Statement of Answer was filed by Respondents Shearson and Robbins on August 23, 1993. The Respondents did not execute a Uniform Submission Agreement. (See Other Issues).

Respondents' Supplemental Answer and Counterclaim was filed on March 16, 1994.

Claimant's Reply to Respondents' Counterclaim was filed on April 12, 1994.

Claimant's Objection to Respondents' Supplemental Answer and Counterclaim and Claimant's Response to Respondents' Motion to Dismiss was filed on April 12, 1994. Also filed on April 12, 1994, Claimant's affidavit in support of Claimant's Objection to Respondents' Supplemental Answer and Counterclaim and in support of Claimant's Response to Respondents' Motion to Dismiss.

An Amendment to the Statement of Claim was filed by Claimant on May 9, 1994.

Respondents' Response to Claimant's Amendment to the Statement of Claim was filed on May 11, 1994.

### **HEARING INFORMATION**

A Preliminary Hearing with the full panel was held on May 9, 1994 with the full panel for one (1) hearing session.

The hearing was held on June 29, 1994, June 30, 1994, October 5, 1994, October 6, 1994, and November 9, 1994, for two hearing sessions on each date at the Hall of Justice in Louisville, Kentucky . A total of eleven (11) hearing sessions were conducted in this matter.

### **CASE SUMMARY**

Claimant Farra M. Alford alleged in his Statement of Claim that starting in 1982, he had given Respondents Shearson and Robbins authority to select investments and effect executions in his account, with instructions to follow a specific investment strategy. Claimant alleged that during the period from 1987 through 1990, Respondents abandoned Claimant's successful investment strategy and engaged in transactions that were unsuitable and inconsistent with Claimant's investment objectives. Claimant further alleged that Respondents made misrepresentations of material fact, withheld material facts, failed to enter stop loss orders as instructed, charged secret markups, and unilaterally liquidated the investments. Claimant alleged that Respondents' actions constituted securities fraud, common law fraud, violations of federal and state RICO laws, and breach of fiduciary duty. Claimant further alleged that Respondent Shearson had failed to supervise Respondent Robbins.

Respondents in their Answer stated that Claimant does not allege that Respondents had discretionary authority nor that any of the trades were unauthorized. Respondents denied that any misrepresentations were made to, or material information was withheld from Claimant. Respondents also denied that the purchase of Prospect stock was unsuitable in light of Claimant's stated investment objectives and ability to withstand the risks involved.

Respondents set forth the following affirmative defenses in their Supplemental Answer and Counterclaim: Claimant's claims are barred by the doctrines of estoppel, ratification and waiver, and by the applicable statutes of limitation;

Claimant's common-law claims are barred by the Kentucky Blue Sky Law; Claimant's negligence claim is barred in whole or in part by the defenses of contributory and/or comparative negligence; Claimant did not justifiably rely on any alleged misstatement or omission; Claimant authorized all trades; Claimant was a knowledgeable investor who understood the risks inherent in the investments made by him; any loss experienced by Claimant was the result of unforeseeable market conditions; the purported wrongdoing was not a proximate cause of Claimant's damages; certain of Claimant's claims are ineligible for arbitration; Claimant failed to mitigate his damages; Respondents did not misrepresent or omit any material facts; Respondents did not act with scienter; Respondents acted at all times reasonably and in good faith, and were not negligent; and Respondents did not breach any fiduciary or legal duty or contractual obligation.

Respondents' counterclaim alleged that Claimant owes Respondent for margin debt in the amount of \$82,490. In support of their counterclaim, Respondents rely on alleged breach of contract and account debt.

Claimant in his Reply to Respondents' Counterclaim denied the allegations in their entirety. Claimant alleged that Respondent wrote off the unsecured debit balance in Claimant's account, and set forth the following affirmative defenses: Respondents have waived any claim to the debit balance; the debit balance previously billed was released; and Respondents' counterclaims are barred by the doctrines of estoppel and laches.

Claimant in his Amended Statement of Claim, additionally alleged breach of contract.

Respondents in their Response to Claimant's Amendment to the Statement of Claim decided not to oppose Claimant's amendment.

#### **RELIEF REQUESTED**

Claimant requested: out-of-pocket damages of \$995,053.43; margin interest of \$250,000; prejudgment interest; post-judgment interest; punitive damages; reasonable attorney's fees; forum costs; Federal and state RICO damages; and referral of this matter to the appropriate regulatory authorities at the New York Stock Exchange, National Association of Securities Dealers, Inc., the U.S. Securities and Exchange Commission, and the directors or commissioners of the New York and Kentucky Divisions of Securities.

Respondents requested in their Answer that the Statement of Claim be dismissed

in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents filed a Motion to Dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure ("the Code"). The Claimant filed a response. After due consideration, the Panel denied the motion.

Respondents Shearson and Robbins did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original remains 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 filed by Claimant Farra M. Alford, is denied and dismissed in its entirety.
2. The Counterclaim filed by Respondents Shearson Lehman Brothers, Inc. and Arthur J. Robbins is denied and dismissed in its entirety.
3. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
4. Any relief not specifically provided for herein is denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed:

11 hearing session x \$1,000 = \$11,000.

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Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$250, and the hearing session deposit in the amount of \$1,000 previously paid to the NASD by Claimant.

The panel has ordered that the Claimant pay additional forum fees to the NASD in the amount of \$4,500 and Respondents, jointly and severally, pay \$5,500 to the NASD.

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

**By The Arbitration Panel:**

Dated:

12-8-94



Hugh C. Durbin, Presiding  
Public Arbitrator

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Michael M. Losavio, Esq.  
Public Arbitrator

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Edward T. Kennedy  
Industry Arbitrator

Date Award Served By the NASD: December 14, 1994

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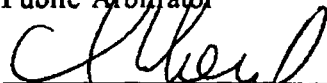
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12-12-94

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