

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lois G. Close

93-02073

Name of Respondents

Shearson Lehman Brothers, Inc.
Gary Meyerer

REPRESENTATION

For Claimant: F. William Meservey, Esq., Huntington, New York.

For Respondents: Christine Tracy, Esq. of Smith Barney, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: May 24, 1993.

Claimant's Submission Agreement signed on: June 30, 1993.

Statement of Answer filed by Respondents on: October 5, 1993.

Respondent Shearson Lehman Brothers' Submission Agreement signed on: November 15, 1993.

Respondent Gary Meyerer's Submission Agreement signed on: March 7, 1994.

HEARING INFORMATION

Hearing Dates / Sessions: November 2, 1994 / Two Sessions.
 November 3, 1994 / Two Sessions.
 December 6, 1994 / Two Sessions.
 December 7, 1994 / Two Sessions.

Hearing Location: Offices of the National Association of Securities Dealers located
 at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant alleged that Respondent Shearson Lehman Brothers, Inc. ("Shearson"), through its employee, Gary Meyerer ("Meyerer"), Recommended unsuitable investments to her and her late husband and that Claimant purchased said securities based upon Respondents' recommendations. Claimant further alleged that she and her late husband consulted with Respondent Meyerer and told him they were seeking safe investments that would return approximately 10% on principal and that at the time Claimant's portfolio consisted of high grade corporate securities, bonds and money market funds. Claimant further alleged that Meyerer recommended that all Claimant's stock be sold and the proceeds be reinvested in the following limited partnerships purchased by Claimant:

EQK Green Acres LP
Aetna R.E. Associates L.P.
Participating Development Fund LP 86
Insured Income Properties 86
Capital Growth Mortgage Investors
Balcor/Colonial Storage 86 LP
Balcor Current Income 87 LP
Balcor Pension Investors VII
American Entertainment Partners 86
American Entertainment Partners II
American First Fed. Guarantee Mtg. Fund 2

Claimant alleged that the investment advice provided her was inconsistent with the specific direction given to Shearson and Meyerer and that the advice given Claimant was contrary to the generally accepted principles of investment under the prudent man rule. Claimant alleged that the limited partnerships were unsuitable given her investment needs and objectives, the high degree of risk associated with the limited partnerships and the fact that the investments constituted a substantial part of Claimant's assets. Claimant also alleged that Respondent Meyerer never advised her, nor her husband, of the potential risks associated with limited partnership investments. Claimant further alleged that Respondent Meyerer never disclosed the limited partnerships' market value or that the securities had lost a substantial portion of their value. Claimant also alleged, in an amendment to her complaint, that Respondent Meyerer, and all predecessor account representatives assigned to Claimant's account, continued to advise and recommend that the limited partnerships purchased by Claimant were suitable and appropriate for Claimant. Claimant also alleged that Respondents failed to advise Claimant and her husband that the limited partnerships had lost substantial value and that the monthly statements provided by Respondents showed only the purchase price of the limited partnerships and never showed the true market value and as a result Claimants were led to believe that the investments had not lost value.

Respondents maintained that the only limited partnership purchased by the Claimant within six

years of her filing her statement of claim was Aetna Real Estate Associates LP and that all the other investments were not eligible for arbitration under Section 15 of the NASD Code of Arbitration Procedure. Respondents maintained that the limited partnerships purchased by Claimant were suitable investments and that Respondents acted properly with respect to Claimant's investments and that Claimant and her husband were sophisticated investors. Respondents further maintained that Claimant received a prospectus for each limited partnership purchased which disclosed the attendant risks prior to the time Claimant purchased the investments. Respondents also maintained that Meyerer discussed the limited partnerships with Claimant prior to the time Claimant's investments were made and in light of Claimant's financial objectives. Respondents then maintained that Claimant had prior experience investing in limited partnerships and that Claimant understood the investments and concluded that they suited her investment objectives.

Respondents maintained the following affirmative defenses: (1) Claimant received a prospectus disclosing the risks associated with each limited partnership purchased and Claimant authorized the purchase of each limited partnership and was therefore estopped from bringing this action, (2) Claimant's statement of claim was barred pursuant to Section 15 of the NASD Code of Arbitration Procedure, (3) The limited partnerships Claimant purchased were suitable at the time of purchase, (4) Claimant knew of, understood and could afford the risks associated with the limited partnerships, (5) Claimant received monthly statements, confirmations, quarterly and year end status reports, and failed to make a timely complaint regarding the limited partnerships purchased, (6) Respondents made no misrepresentations, omissions or misstatements with respect to Claimant's limited partnership investments, (7) The limited partnership purchases were consistent with Claimant's investment objectives, financial experience and background.

RELIEF REQUESTED

Claimant requested:

1. An award in the amount of \$200,000 which includes lost principal, lost growth, lost income, costs of arbitration, expert witness fees, and attorney's fees.

Respondents requested:

1. The Statement of Claim against Respondents Shearson and Meyerer be dismissed in its entirety.
2. Costs of this matter be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondents moved to dismiss Claimants claims as they related to the following limited partnerships pursuant to Section 15 of the NASD Code of Arbitration Procedure:

EQK Green Acres LP
Participating Development Fund LP 86
Balcor Pension Investors VII
American Entertainment Partners I
SLB Pension & Retirement LP
Insured Income Properties
American First Fed. Guarantee Mtg. Fund
American Entertainment II LP
Balcor/Colonial Storage 86 LP
Balcor Current Income 87 LP

Respondents maintained that the above limited partnerships were all purchased by Claimant more than six (6) years before Claimant filed her statement of claim and as such were ineligible for arbitration pursuant to Section 15 of the NASD Code of Arbitration Procedure.

Claimant, in her response to Respondents' Motion, maintained that the determination of the occurrence or event which started the running of the six (6) year eligibility requirement under Section 15 of the NASD Code of Arbitration Procedure must be determined by the arbitrators based upon the facts and circumstances of this proceeding.

The arbitrators requested that the parties submit memoranda on this issue following the second day of hearings in this matter and arbitrators considered the memoranda submitted by the parties in reaching their final decision.

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. Claimant's statement of Claim is dismissed in its entirety.
2. Each party shall bear their own respective costs.

FORUM FEES

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

Claim Filing fee of \$200.

Hearing session fee: 8 sessions X \$750 = \$6,000.

Total forum fees = \$6,200.

Forum fees Assessed Against:

1. Claimant is assessed the sum of \$3,100 which represents one-half of the total forum fees due, less \$200 claim filing fee and \$750 hearing session deposit paid by Claimant, leaving \$2,150 due. Claimant is liable and shall pay to the NASD the sum of \$2,150.
2. Respondents are assessed the sum of \$3,100 which represents one-half of the total forum fees due. Respondents are liable, jointly and severally, and shall pay to the NASD, the sum of \$3,100.

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

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NASD Award #93-02073

Concurring Arbitrators' Signatures

Name

Public Chairperson

Cynthia L. Boyce, Esq.

Name

Industry Panelist

Robert A. Foy, Esq.

Name

Public Panelist

Kenneth M. Felder

Date of Decision: April 25, 1995

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NASD Award #93-02073

STATE OF:

SS:

COUNTY OF:

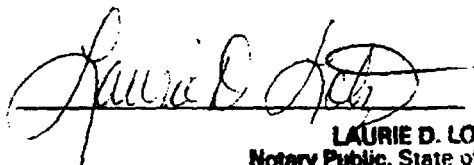
On this day of , 1995, before me personally appeared Cynthia L. Boyce, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: NEW YORK

SS:

COUNTY OF: WESTCHESTER

On this 24th day of April , 1995, before me personally appeared Robert A. Foy, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



LAURIE D. LOTZ
Notary Public, State of New York
No 4700556
Qualified in Westchester County
Commission Expires April 30, 1997

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Kenneth M. Felder known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

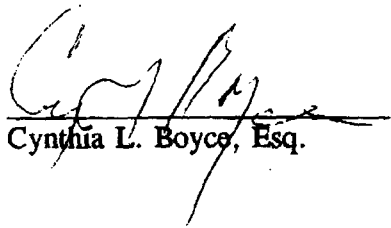
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Name

Public Panelist

Kenneth M. Felder

Date of Decision: April 25, 1995

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NASD Award #93-02073

STATE OF: *NEW YORK*

COUNTY OF: *NEW YORK*

SS:

On this *17* day of *APRIL*, 1995, before me personally appeared Cynthia L. Boyce, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ANDREW RUSSELL
Notary Public, State of New York
No. 02RU5034752
Qualified in New York County
Commission Expires Oct. 17, 19*96*

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Robert A. Foy, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

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Kenneth M. Felder

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STATE OF:

SS:

COUNTY OF:

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STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Robert A. Foy, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

New York

SS:

COUNTY OF:

Westchester

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PATRICIA L. QUINT
Notary Public, State of New York
No. 4989966
Qualified in New York County
Certificate Filed in Westchester County
Term Expires December 23, 1995