

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Norman L. Pasnow

and

93-02148

Name of Respondents

Shearson Lehman Brothers, Inc. and
George P. Laras-Karageorgis

REPRESENTATION OF PARTIES

Norman L. Pasnow ("Claimant") was represented by Michael L. Blake, Esq., Denver, Colorado.

Shearson Lehman Brothers, Inc. and George P. Laras-Karageorgis ("Respondents") were represented by John S. Lutz, Esq. and Otto K. Hilbert II, Esq. of LeBoeuf, Lamb, Greene & MacRae, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about May 28, 1993. Submission Agreement of Claimant was signed on May 26, 1993.

Statement of Answer was filed by Respondents on or about August 20, 1993. Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was signed on July 12, 1993 by James S. Goddard. Submission Agreement of Respondent George P. Laras-Karageorgis was signed on August 30, 1993.

HEARING INFORMATION

A pre-hearing conference was held on Wednesday, February 23, 1994 for one (1) session in Denver, Colorado with Daniel C. Himelsbach, Esq. and Richard L. Behr, Jr. presiding.

The hearing was held on Monday, March 14, 1994 for two (2) sessions, Tuesday, March 15, 1994 for two (2) sessions, Wednesday, March 16, 1994 for two (2) sessions and Saturday, March 19, 1994 for two (2) sessions in Denver, Colorado for a total of eight (8) hearing and one (1) pre-hearing sessions.

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CASE SUMMARY

Claimant alleged that Respondents violated §10b of the Securities Exchange Act of 1934, the Colorado Securities Act, breached their fiduciary duty to the Claimant, engaged in common law fraud, were negligent, violated the RICO statute and intentionally inflicted emotional distress on the Claimant by engaging in unsuitable and unauthorized transactions. Specifically, Claimant made the following allegations:

- * Beginning in or about July, 1984, and continuing thereafter, Respondents made representations to Claimant and solicited Claimant to open accounts with the Respondents for the purpose of purchasing and selling securities through Respondents. At the time Claimant's securities accounts were opened, Respondents knew Claimant was of advanced age and lacked sufficient investment experience, mental ability and financial acumen to enable plaintiff to make informed decisions about the purchase and sale of securities.
- * In the course of inducing Claimant to open securities accounts with Respondents and throughout the relationship between Claimant and Respondents, Respondents made several misrepresentations to Claimant concerning the relative safety of trading securities, including without limitation:
 - a. that they had a wealth of experience in trading securities;
 - b. that they would have competent and knowledgeable traders managing Claimant's securities accounts;
 - c. that Claimant would make a profit from the trading of his securities accounts;
 - d. that his maximum exposure respecting the transactions Respondents recommended and/or entered into would be limited and minor;
 - e. that the risk of loss in trading securities would be minimal so long as Claimant followed Respondents' recommendations;
 - f. that the transactions they either recommended or made on Claimant's behalf were suitable to Claimant in light of his advanced age, financial needs, and investment objectives; and
 - g. the nature of trading securities in his accounts on a margin basis.
- * Throughout the period of time during which Claimant had the securities accounts with the Respondents, Respondents controlled the activities in the accounts.
- * Respondents executed transactions in Claimant's accounts without first having the Claimant specify:
 - a. The precise security interest to be purchased or sold;
 - b. The exact amount of the security interest to be purchased or sold; and
 - c. The date and time the transaction was to be effected.

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- * Respondents made recommendations to Claimant concerning the purchase, sale, and continued holding of securities and effected transactions in Claimant's accounts without first:
 - a. Obtaining from Claimant the essential facts about Claimant's financial condition;
 - b. Verifying with Claimant the accuracy of that information they obtained previously and/or from other sources concerning Claimant's financial condition; and/or
 - c. Having reason to believe that the recommendations and/or transactions were suitable for the Claimant in light of:
 - (i) The information obtained from Claimant or otherwise know about the Claimant;
 - (ii) Claimant's needs and financial situation;
 - (iii) The risk of loss involved therein; and
 - (iv) Claimant's investment objectives of conservative long-term gains and income.
- * Respondents effected trades in Claimant's securities accounts without specific written authorization and without written authorization to transact trades without the specific authorization of Claimant.
- * Respondents failed to adopt and to implement procedures to properly manage and supervise Claimant's account.
- * The Respondents failed to properly explain to the Claimant how to properly read and interpret the statements and confirmation slips sent by the Defendant's to the Claimant concerning Claimant's securities accounts.

In their Statement of Answer, Respondents stated that the Claimant was an aggressive and experienced investor, very determined to trade his account as he saw fit. Respondents also stated that the branch manager properly and adequately supervised the claimant's account and the trading activity in the account and that Respondent Lares reasonably and properly dealt with the Claimant in a professional manner. Respondents also asserted affirmative defenses including but not limited to the following:

- * the Statement of Claim fails to state a cause of action upon which relief can be granted
- * the injuries, if any, alleged to have been sustained by the Claimant, were caused, in whole or in part, by the culpable conduct of the Claimant
- * the transaction complained of herein were duly authorized and consented to by Claimant and he is estopped from bringing this matter
- * assumption of the risk
- * Claimant is entitled to no recovery under the defenses of waiver and ratification
- * failure to mitigate

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RELIEF REQUESTED

Claimant requested an award \$50,000 in actual damages, interest thereon from the date the accounts were opened, and for costs and expenses incurred herein and such other relief as the panel deems appropriate on Count I of the Statement of Claim. On Count II of the Statement of Claim, the Claimant requested an award of \$50,000 in actual damages, interest thereon from the date the accounts were opened, for costs and expenses incurred herein, \$1,000,000 punitive damages, and such other relief as the panel deems appropriate. Claimant requested an award of \$50,000 in actual damages, interest thereon from the date the accounts were opened, for costs and expenses incurred herein, \$1,000,000 punitive damages, and such other relief as the panel deems appropriate on Counts III, IV, and V of the Statement of Claim. On Count VI of the Statement of Claim, Claimant requested an award of \$50,000 in actual damages, statutory interest thereon from the date the accounts were opened, for costs and expenses incurred herein, treble damages, and such other relief as the panel deems appropriate. On Count VII of the Statement of Claim, Claimant requested an award of actual damages plus \$500,000 in compensatory damages and punitive damages plus his costs and expenses incurred herein, and such other relief as this panel deems appropriate.

Respondents requested that the allegations and claims made against them by the Claimant be dismissed in their entirety with prejudice and that they be awarded their costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

During the pre-hearing conference conducted on Wednesday, February 23, 1994, Arbitrators Himelbach and Behr heard oral argument on the Motion to Dismiss. After hearing the arguments of the parties and considering the submissions of the parties on the Motion, the panel ruled that the jurisdictional limit set forth in §15 of the N.A.S.D. Code of Arbitration Procedure will apply and that claims arising out of transaction after March 31, 1987 will be considered by the panel. The arbitration panel further ruled that the three year period of limitations will apply unless the Claimant can demonstrate an exception. The panel finally ruled that evidence from any period of time could be submitted.

At the conclusion of the Claimant's case in chief, Respondents asserted a Motion for Directed Verdict. Claimant withdrew the RICO claim (Count VI) asserted in the Statement of Claim and the claims for emotional distress (Count VII). After considering the arguments presented on behalf of the parties and the evidence presented to that time, the undersigned arbitrators denied the motion.

During the presentation of their case in chief, Respondents requested an award of attorneys' fees incurred in this matter based upon the argument that the claims asserted in this matter were frivolous. Respondents also submitted an affidavit of attorneys' fees.

