

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimant

Jane Ames Chirurg

93-02383

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

Claimant was represented by Thomas Farrell, Esq., of the law firm of Gold, Farrell and Marks located in New York, N.Y..

Respondent was represented by John Bevilaqua, Esq., of Smith Barney Shearson, Inc..

CASE INFORMATION

The Statement of Claim was filed on: June 15, 1993.

Claimant's Submission Agreement was signed on: June 10, 1993.

Statement of Answer filed by Respondent, Shearson Lehman Brothers, Inc. on: August 25, 1993.

Respondent's Submission Agreement signed on: June 10, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: 9/28/95 - 2 sessions
 9/27/95 - 2 sessions
 7/06/94 - 2 sessions

Hearing Location: N.A.S.D., Inc., New York City, N.Y.

CASE SUMMARY

Claimant alleged that Respondent's investment conduct was unsuitable to her investment profile. Claimant maintained that Respondent mismanaged her account for a period of several years between 6/30/87-6/30/92. Claimant further alleged that Respondents managed her account for commissions, "churning," and not for profit.

Claimant alleged that her investor profile was one of "long term growth, protection of principal and building up of retirement funds." Claimant further alleged that she was an unsophisticated investor with little experience and asserted that Respondent know of her investor profile.

Claimant maintained that Respondent's investment conduct was unsuitable to her investor profile. Claimant alleged that movement in and out of Shearson funds carried excessive frontloaded sales fees. Claimant further asserted that approximately 18 mutual funds that she held positions in were unsuitable to her investor profile. Furthermore, Claimant alleged that tax implications were not taken into account when investments were made.

Finally, Claimant asserted that her account was managed for commissions and not for profit. Claimant maintained that the short holding period of a variety of bonds benefitted Respondent more than herself. Claimant further alleged that approximately 55 separate investments made were excessive and not in her financial interests.

Respondent asserted that each of the Claimant's allegations, for unsuitability, mismanagement and churning should be dismissed. Respondent alleged that Claimant knew that some degree of risk would be involved in order to achieve her investment goals. Respondent maintained that Claimant completed a questionnaire in which the information was used to develop a Personal Review Outline ("PRO"). The PRO made several recommendations which the Claimant was uncomfortable with. Respondent alleged that Claimant discussed various investment strategies until Claimant decided upon the exact investment portfolio. Respondent further alleged that Claimant was actively participating in handling her account. Moreover, Respondent alleged that Claimant had some speculative investment ideas, and had withdrawn a considerable amount from her account.

Respondent further alleged that Claimant's account increased in value and that Claimant did not consider her withdrawals and the current value of certain investments which allegedly led to some financial loss.

Respondent maintained that they are not responsible for failing to follow the PRO recommendations, since they alleged that Claimant was the one who determined not to follow the PRO's recommendations.

Respondent next alleged that Claimant was actively participating in investment strategies and decisions. Respondent maintained that Claimant authorized each and every transaction in her account.

Furthermore, Respondent alleged that Claimant made numerous withdrawals from her account in the form of checks and American Express Gold Card charges. Respondent maintained that Claimant failed to take into account these withdrawals, which affected her FMA account.

Respondent alleged that Claimant's calculation of damages is unfounded. Respondent alleged that Claimant's account shows an overall profit of approximately \$37,000.00.

Respondent maintained that Claimant's allegations of "churning" are wholly unsubstantiated. Respondent alleged that Claimant's use of terms such as "unsuitability" without substantial support for her claim is unfounded. Respondent alleged that the account had an overall turnover rate of 0.45 which is allegedly well below the turnover ratio considered excessive.

Respondent maintained that for all reasons stated above the Claimant's Statement of Claim should be dismissed.

RELIEF REQUESTED

Claimant requested in her pleadings the following relief:

1. \$69,393.00
2. punitive damages.

Respondent requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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 Claimant's claims are dismissed in their entirety.
2. The Claimant's request for punitive damages is denied.
3. All allegations of wrongdoing contained in the Statement of Claim against Cheryl Jimerson and Julia Chiu were unfounded and, therefore, should be expunged from these individual's U-4 forms.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable filing fee: \$150.00

6 sessions X \$500 = \$3,000.00
Total fees \$3,150.00

The undersigned arbitrators have determined that the Claimant is liable for the costs of arbitration. The Claimant is assessed the sum of \$3,150.00. The Claimant previously paid \$1,100.00 and owes a balance of \$2,050.00.

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

Concurring Arbitrators' Signatures

Name William Friedman
William Friedman, Esq.

Public

Charles S. Lester
Charles S. Lester, Esq.

Public

Richard S. Peskin
Richard S. Peskin, Esq.

Industry

Date of ^{Execution} Decision: 10/19/95

Date of Decision: October 24, 1995