

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Jay Stuart Radetsky

and

93-02526

Name of Respondents

Shearson Lehman Hutton, Inc. and
Russell Green

REPRESENTATION OF PARTIES

Jay Stuart Radetsky ("Claimant") was represented by Anthony J. Kohler, Esq., Denver, Colorado.

Shearson Lehman Hutton, Inc. and Russell Green ("Respondents") were represented by Alejandro Schwed, Esq. of Smith Barney Shearson, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about June 28, 1993. Submission Agreement of Claimant Jay Stuart Radetsky was signed on June 8, 1993.

Statement of Answer was filed by Respondents Shearson Lehman Hutton, Inc. and Russell Green on or about September 21, 1993. Submission Agreement of Respondent Shearson Lehman Hutton, Inc. a/k/a Shearson Lehman Brothers, Inc. was signed on September 22, 1993 by Alejandro Schwed. Submission Agreement of Russell Green was signed on September 17, 1993.

HEARING INFORMATION

A pre-hearing conference was held on Thursday, April 14, 1994 for one (1) session with Thaddeus J. Tecza, PhD., presiding.

The hearing was held on Tuesday, May 10, 1994 for two (2) sessions, Wednesday, May 11, 1994 for two (2) sessions, Thursday, May 12, 1994 for one (1) session and Monday, May 23, 1994 for three (3) sessions in Denver, Colorado for a total of eight (8) hearing and one (1) pre-hearing sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in churning, made unsuitable recommendations and transactions; and engaged in unauthorized trades.

- * directing and effecting excessive trades which resulted in churning Claimant's account in order to generate sizeable commissions;
- * directing and effecting trades of securities in a manner contrary to Claimant's investment goals and objectives;
- * directing and effecting unauthorized and *de facto* discretionary trades in Claimant's account without obtaining express written discretionary authority, and without implementing the proper procedures for managing a discretionary account;
- * directing and effecting unsuitable trades in Claimant's account;
- * failing to execute trade orders made by Claimant;
- * failing to observe both standing and specific stop loss orders made by Claimant;
- * misrepresenting and/or failing to disclose material facts to Claimant; and
- * failing to supervise, or intentionally improperly supervising, Claimant's account and failing to supervise, or intentionally improperly supervising Respondent Green.

Respondents denied the allegations set forth in the Statement of Claim and also stated that the Claimant was a sophisticated investor and that the trading in the account was pursuant to his investment objectives; that Claimant welcomed the profits that the type of trading engaged in provided him. The following affirmative defenses were also asserted:

- * the statement of claim fails to state a claim upon which relief can be granted;
- * the transactions were appropriately entered and confirmed in accordance with industry, legal and regulatory requirements;
- * authorization, approval and/or ratification;
- * claims are barred because the Claimant failed to timely complain;
- * claims are barred by the doctrines of laches, waiver and estoppel;
- * any losses allegedly sustained by the Claimant were due to his own decision to buy, hold or sell the securities complained of;
- * failure to mitigate;
- * any losses allegedly sustained by the Claimant were caused by the sole actions and/or negligence of the Claimant;
- * punitive damages are inappropriate under the facts of this case and are not recoverable in arbitration; and
- * the claims are barred by the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of compensatory damages in an amount in excess of \$75,000; pre and post award interest; punitive damages in such amount as the arbitrators deem

appropriate to deter the Respondents from future acts of misconduct as those giving rise to this claim; and for all of Claimant's costs, expenses and disbursements including reasonable attorney's fees incurred in pursuing this claim.

Respondents requested that the panel dismiss this claim and assess all costs against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the N.A.S.D.

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 Shearson Lehman Hutton, Inc. and Russell Green shall be and hereby are jointly and severally liable for and shall pay to the Claimant Jay Stuart Radetsky the sum of **Sixteen thousand eight hundred twenty four dollars and forty nine cents (\$16,824.49)**.
2. Interest is awarded on **Ten thousand six hundred ninety three dollars and ten cents (\$10,693.10)** of the above stated sum at the rate of 8% per annum from and inclusive of January 25, 1990 to and inclusive of the date this award is paid.
3. Interest is awarded on **Six thousand one hundred thirty two dollars and thirty nine cents (\$6,132.39)** of the above stated sum at the rate of 8% per annum from and inclusive of November 20, 1990 to and inclusive of the date this award is paid.
4. Claimant Jay Stuart Radetsky shall be and hereby is liable for and shall pay to the Respondent Shearson Lehman Hutton, Inc. the sum of **Five thousand dollars (\$5,000)** as attorneys fees and expenses incurred in this matter. The undersigned arbitrators find that they have authority to so award attorneys fees and expenses.
5. All other costs, expenses and fees incurred by the parties shall be borne by the party incurring such costs, expenses and fees.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were eight (8) sessions x \$500 = \$4,000 and one (1) session x \$300

= \$300 for a total of \$4,300 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the N.A.S.D. by the Claimant. Claimant shall pay to the NASD the sum of \$2,400 and Respondents shall be jointly and severally liable for and shall pay to the NASD the sum of \$1,400 as the balance due for forum fees.

The N.A.S.D. shall retain postponement fees in the amount of \$500 previously deposited with the N.A.S.D. by Respondent Shearson. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Thaddeus J. Tecza
Thaddeus J. Tecza, PhD.
Public Arbitrator, Presiding Chair

June 6, 1994

s/ Carol J. Zamperini
Carol J. Zamperini
Public Arbitrator

June 13, 1994

Dissenting from paragraphs 1, 2 and 3 of the Award but concurring in paragraphs 4 and 5 of the Award.

s/ Albert T.T. Cook
Albert T.T. Cook, Jr.
Industry Arbitrator

June 7, 1994