

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Charles Lipton
Bert Forman
Judith Mark

93-02600

Names of Respondents

Shearson Lehman Brothers, Inc.
Charles H. Goubeaud
Kenneth Donn
Donald N. Rich

REPRESENTATION

For Claimants Charles Lipton ("Lipton"), Judith Mark ("Mark") and Bert Forman ("Forman") appeared Steven M. Kramer, Esq., of the law firm of Steven M. Kramer & Associates, located in New York, New York.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson"), Charles H. Goubeaud ("Goubeaud"), Kenneth Donn ("Donn"), and Donald N. Rich ("Rich") appeared William A. Hohausser, Esq., Associate General Counsel of Smith Barney, Inc.

CASE INFORMATION

Statement of Claim filed by Lipton, Forman and Mark on: June 29, 1993.

Lipton's Submission Agreement signed on: June 9, 1993.

Forman's Submission Agreement signed on: June 21, 1993.

Mark's Submission Agreement signed on: May 27, 1993.

Joint Statement of Answer filed by Shearson, Goubeaud, Donn and Rich on: October 8, 1993.

Shearson's Submission Agreement signed on: October 8, 1993.

Goubeaud's Submission Agreement signed on: October 29, 1993.

Donn's Submission Agreement signed on: October 25, 1993.

Rich's Submission Agreement signed on: October 26, 1993.

Amended Statement of Claim filed: December 1, 1993.

Statement of Answer to Amended Statement of Claim filed: December 23, 1993.

Claimants' response to Respondents' Statement of Answer to Amended Statement of Claim filed: January 5, 1994.

Respondents' reply to Claimants' response to Respondents' Answer to Amended Statement of Claim filed: January 10, 1994.

HEARING INFORMATION

Pre-hearing Conference:	May 31, 1994	-	One Session (panel)
Hearing Dates/Sessions:	June 7, 1994	-	Two Sessions
	June 8, 1994	-	Two Sessions
	June 9, 1994	-	Two Sessions
	June 23, 1994	-	One Session (one arbitrator)
	June 24, 1994	-	One Session
	July 21, 1994	-	One Session (one arbitrator)
	August 10, 1994	-	One Session (one arbitrator)
	October 3, 1994	-	Two Sessions
	October 4, 1994	-	One Session
	November 1, 1994	-	Two Sessions
	November 2, 1994	-	Two Sessions
	November 3, 1994	-	Two Sessions
	December 13, 1994	-	Two Sessions
	December 14, 1994	-	Two Sessions
	April 24, 1995	-	Two Sessions
	April 25, 1995	-	Two Sessions
	May 5, 1995	-	One Session
	May 22, 1995	-	Two Sessions
	June 26, 1995	-	One Session
	June 27, 1995	-	Two Sessions
	July 11, 1995	-	Two Sessions
	July 12, 1995	-	Two Sessions
	July 26, 1995	-	Two Sessions
	July 27, 1995	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc.,

located in New York City, New York.

CASE SUMMARY

Lipton alleged that he became a client of Shearson and Rich in 1987. Lipton further alleged that Rich placed him in naked options; that he had no expertise in naked options; that Rich failed to advise him of the risks involved in trading options; that all of the trades were done at the behest of Rich; that Rich placed a disproportionate amount of his assets in options; and that Rich made unauthorized purchases in his account. In addition, Lipton maintained that the trades were unsuitable in light of his investment objectives.

Claimants maintained that, in 1990, Goubeaud, solicited Lipton's account and thereafter the accounts of Forman and Mark. Claimants alleged that they became victims of Respondents' scheme to defraud them out of their money; that Respondents falsely represented Goubeaud as an expert in Connecticut banking stocks and falsely represented that Goubeaud had information not yet known to others about imminent take-overs. Claimants also alleged that Respondents failed to disclose that Goubeaud made numerous unauthorized trades, churned Lipton's account, inserted false information on Lipton's client information form, and intentionally delayed mailing confirmation slips or did not send them out at all.

Claimants alleged that the trades made in their accounts were unsuitable in light of their investment objectives; that Respondents violated the "Know Your Customer Rule" and the federal and state RICO statutes; that Respondents' conduct constituted fraud and that Shearson and Donn failed to supervise the actions of Rich and Goubeaud.

In the Amended Statement of Claim, Lipton maintained that he was addicted to narcotics for almost his entire adult life until June, 1992. Lipton alleged that, when he first met Rich, he told Rich that he was addicted to cocaine and marijuana and that Rich led him to believe that he was concerned for him and wanted to be his friend. Lipton further alleged that he told Rich that he was recently divorced, in huge debt, had only \$30,000.00 to invest and wanted to invest conservatively. Lipton maintained that Rich told him that he was an expert in options and that he had a formula to utilize options in a very conservative manner. Lipton alleged that Rich placed almost ninety percent of his assets in options and that he lost \$54,500.00 by the Fall of 1989.

Lipton alleged that, in January 1991, he disclosed his substance abuse problem to Goubeaud. Lipton further alleged that, on April 24, 1991, the doctor who was treating him for his drug problem, contacted Goubeaud and advised Goubeaud of Lipton's drug problem. Lipton maintained that, in the course of this conversation, Goubeaud stated he was aware of Lipton's drug problem and that he would only invest Lipton's money conservatively.

Respondents generally denied the allegations made by Lipton and maintained that Lipton was a short term investor and that he often insisted on realizing quick profits. Respondents further maintained that Lipton told Rich that his annual income exceeded \$100,000.00 and that he had that amount of liquidity.

Respondents denied that all transactions were executed at the behest of Rich and maintained that Lipton instructed Rich to purchase certain stocks which account for a large percentage of the losses sustained by Lipton. Respondents maintained that another significant portion of Lipton's losses was attributable to the general market decline of October 1987. Respondents also maintained that Lipton consented to all of the transactions that were executed by Rich and that Rich acted in accord with Lipton's expressed investment objectives.

Respondents maintained that, when Goubeaud took over Lipton's account, Lipton informed Goubeaud that he was an aggressive, short-term investor. Respondents also maintained that Goubeaud recommended Connecticut bank stocks to Lipton based upon information contained in publicly available news reports. Respondents maintained that when the per-share price of the various bank stocks appreciated, Lipton purchased additional shares of bank stocks, despite Goubeaud's recommendation that Lipton take the profits on some of the transactions. Respondents further maintained that Goubeaud recommended that Lipton diversify, but that Lipton failed to take his advice.

Respondents maintained that Forman and Mark were referred to Goubeaud by Lipton. Respondents alleged that Forman was a very wealthy physician and that he invested primarily in health-care issues. Respondents maintained that many of Forman's investments were not based upon Goubeaud's recommendations, but rather were made at the behest of Lipton. In addition, Respondents maintained that Lipton had discretionary control over Mark's account and, therefore, Lipton was responsible for what occurred in Mark's account.

As affirmative defenses, Respondents asserted that the claims were barred by the principles of laches, estoppel, and waiver; that Claimants failed to mitigate their losses; that Claimants ratified each of the transactions; that Respondents made no misrepresentation of any material fact upon which Claimants detrimentally relied; that the investments made were not unsuitable; and that Claimants were not entitled to punitive damages or attorneys' fees.

In response to Claimant's Amended Statement of Claim, Respondents maintained that the allegations were strained and far-fetched. Respondents maintained that Rich had no recollection of any revelations or any overt physical symptoms of drug abuse and that Goubeaud had no recollection of any substance abuse problems or conversations with Lipton's doctor regarding any addiction.

RELIEF REQUESTED

In the Amended Statement of Claim, Lipton requested actual and compensatory damages of \$4,658,472.00; Mark requested actual and compensatory damages of \$16,000.00; and Forman requested actual and compensatory damages of \$14,000.00. Claimants also requested costs, prejudgment interest, treble damages as provided for under federal and New York State RICO Acts, attorneys' fees and such other and further relief as the panel may deem just. In addition, Claimants requested punitive damages in an amount equal to 5% of the net worth of the corporate respondent.

At the hearing, Lipton requested \$395,000.00 for his out of pocket loss; prejudgment interest

of \$100,000.00; \$134,000.00 for commissions; \$2,600,000.00 for the lost profit for Acclaim; \$670,000.00 for the lost profit for Society for Savings; treble damages or alternatively punitive damages.

Respondents requested that the Statement of Claim be dismissed, and that the Respondents be awarded their costs, including attorneys' fees. In addition, Respondents requested sanctions under FRCP 11 and 3.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimants made a motion to amend their claim to include a request for punitive damages. The panel considered this motion and granted it. In addition, Respondents made a motion to amend their answer to include a counterclaim for costs and fees, including applicable sanctions under FRCP 11 and 3. The panel considered this motion and granted it.

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 remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Shearson, Goubeaud, Donn and Rich be and hereby are dismissed in their entirety.
2. Claimants' request for punitive damages is hereby denied.
3. Claimants' request for treble damages is hereby denied.
4. Claimants' request for attorneys' fees is hereby denied.
5. All counterclaims against Claimants, including Respondents requests for attorneys' fees and for sanctions under FRCP 11 and 3, be and hereby are dismissed in their entirety.
6. Each party shall bear their respective costs.
7. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$300.00 filing fee previously deposited by Claimant and have assessed the following forum fees:

Pre-hearing conference (panel)	=	\$ 1,500.00
38 hearing sessions x \$ 1,500.00	=	\$57,000.00
3 hearing sessions with one arbitrator	=	<u>\$ 900.00</u>
Total fees assessed	=	\$59,400.00

The forum fees are assessed against:

1. Claimants be and hereby are jointly and severally liable for the sum of \$29,700.00, representing one-half of the forum fees assessed. Claimants previously deposited the sum of \$16,950.00, which shall be applied towards the forum fees assessed. Therefore, Claimants are liable and shall pay to the NASD the sum of \$12,750.00.
2. Respondents be and hereby are jointly and severally liable for the sum of \$29,700.00 representing one-half of the forum fees assessed. Respondents previously deposited the sum of \$15,900.00, which shall be applied towards the forum fees assessed. Therefore, Respondents are liable and shall pay to the NASD the sum of \$13,800.00.

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

ARBITRATOR'S SIGNATURE



Richard W. Baldwin, Esq.
Public Chairperson

I, Richard W. Baldwin, Esq., do hereby affirm that this is my decision in the above-captioned matter.



Richard W. Baldwin, Esq.

Date of Decision: September 28, 1995

ARBITRATOR'S SIGNATURE

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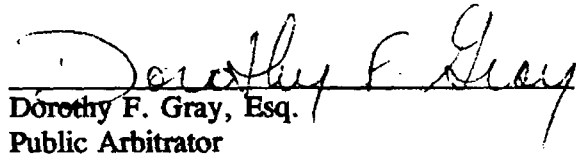
NEW YORK
DEPTC. Anthony Bell**C. Anthony Bell**
Industry Arbitrator

I, **C. Anthony Bell**, do hereby affirm that this is my decision in the above-captioned matter.

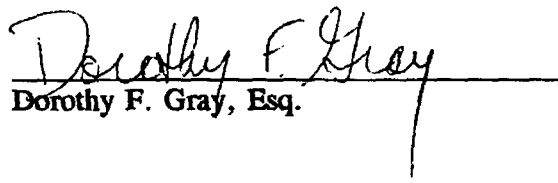
C. Anthony Bell**C. Anthony Bell**

Date of Decision: September 28, 1995

ARBITRATOR'S SIGNATURE


Dorothy F. Gray, Esq.
Public Arbitrator

I, Dorothy F. Gray, Esq., do hereby affirm that this is my decision in the above-captioned matter.


Dorothy F. Gray, Esq.

Date of Decision: September 28, 1995