

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Shirley Sellers Carpenter
Diane Carson

93-04188

Name of Respondents

Shearson Lehman Brothers, Inc.
Legg Mason Wood Walker
The Pinnacle Group, Inc.
George Brooks

REPRESENTATION

Claimants Shirley Sellers Carpenter ("Carpenter") and Diane Carson ("Carson") were represented by Philip J. Smith, Esq. and Stephen J. Grabenstein, Esq., Van Winkle, Buck, Wall Starnes and Davis, Asheville, North Carolina.

Respondent Shearson Lehman Brothers, Inc. ("Shearson") was represented by Cory Hohnbaum, Esq., Kennedy, Covington, Lobdell & Hickman, Charlotte, North Carolina.

Respondent Pinnacle Group, Inc. ("Pinnacle Group") was represented by Bradley R. Kutrow, Esq., Smith Helms Mulliss & Moore, Charlotte, North Carolina.

Respondent George Brooks ("Brooks") was represented by Stewart R. Johnson, Esq., Robinson, Bradshaw & Hinson, Charlotte, North Carolina.

Respondent Legg Mason Wood Walker ("Legg Mason") was represented by Regina Jay Wheeler, Esq., Parker, Poe, Adams & Bernstein, Charlotte, North Carolina.

CASE INFORMATION

The Statement of Claim was filed on October 12, 1993.

Carpenter's and Carson's (collectively "Claimants") combined Submission Agreement was signed on July 29, 1993.

The Statement of Answer was filed by Respondent Shearson on February 18, 1994.
Respondent Shearson did not file an executed Submission Agreement.

Respondent Pinnacle's Statement of Answer and Crossclaim was dated June 15, 1994.
Respondent Pinnacle's Submission Agreement was signed on May 18, 1994.

Respondent Brooks filed his Statement of Answer on February 7, 1994.
Respondent Brooks' Submission Agreement was signed on February 7, 1994.

Respondent Legg Mason filed its Statement of Answer on January 28, 1994.
Respondent Legg Mason's Submission Agreement was signed on January 17, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: March 23, 1995/one session
 August 8, 1995/two sessions
 August 9, 1995/two sessions
 February 19, 1996/two sessions
 February 20, 1996/two sessions
 February 21, 1996/two sessions
 April 23, 1996/two sessions
 April 24, 1996/two sessions
 May 22, 1996/one session

Hearing Location: Holiday Inn
 Charlotte, North Carolina.

CASE SUMMARY

Claimants alleged that Brooks made false representations concerning the nature and soundness of Claimants' investments, and that the statements were made with an intent to deceive Claimants and induce them to invest their monies through Brooks. Claimants also alleged that Brooks was employed by Shearson from September 1, 1986 until May 23, 1986, and then by Pinnacle from May 23, 1986 until August 31, 1988, and by Legg Mason from September 1, 1988 until February of 1990.

Claimants alleged that Brooks induced them to move their money from their Certificate of Deposit, since they were not getting enough interest, and promised that he would be able to double their money in five years. Claimants also alleged that Brooks made risky investments on their behalf, without seeking Claimants' permission, and, at times, refused to heed their requests with regard to their investment accounts. Claimants, among other things, alleged that Brooks refused Carpenter's request to sell shares of Mentor Graphics, Inc., Colonial Government Securities, Keystone Custodian Fund, New Economy Fund, Federal National Mortgage Association, Scottish Southeastern Savings and Loan, Southeastern Savings and Loan, and Kaneb Services, Inc.

Claimants alleged that the Respondents committed a breach of fiduciary duty by purchasing unsuitable investments. Claimants also alleged unauthorized trading by the Respondents. Claimants further alleged that Respondents churned their accounts. Claimants alleged that

Respondents Shearson, Pinnacle, and Legg Mason were liable for failure to supervise Respondent Brooks.

Respondent Brooks denied the charges made by the Claimants. Brooks alleged that Claimant Diane Carson made her allegations merely to support the complaint by her friend, Claimant Shirley Sellers Carpenter. Brooks contended that he discharged all duties he owed to Carpenter, and that he never did any unauthorized trades in Claimants' account. Brooks also denied that Carpenter's accounts were excessively traded or churned. Brooks further argued that Carpenter's failure to register any complaint after receiving confirmation slips showed her approval of the transactions, and that Carpenter's demand for punitive damages and attorneys' fees were beyond the scope of the arbitration agreement. Brooks finally argued that Carpenter's case was barred by the applicable Statutes of Limitations.

Respondent Shearson argued that its liability was barred by Section 15 of the NASD Code of Arbitration Procedure, since the complaints against Shearson took place more than six years prior to date of the Statement of Claim.

Respondent Legg Mason denied the allegations in the Statement of Claim, and made five affirmative defenses. Legg Mason argued that Claimants' Statement of Claim was barred by the statutes of Limitations. Legg Mason also argued that Claimants are estopped from making their claims by failing to take action for activities that took place prior to Brooks' joining Legg Mason. Legg Mason also argued that Claimants' claims were barred as a result of Claimants' contributory negligence, and also because Claimants failed to mitigate their damages.

Respondent Pinnacle denied the claims made by the Claimants. Pinnacle argued that while the Claimants' account was with Pinnacle, the Claimants did not suffer any loss, but actually made net gains on their investments. Pinnacle further alleged that Claimants ratified their investments by failing to make timely objections to the investments they found objectionable. Pinnacle also made six affirmative defenses, including Statutes of Limitations, Claimants' contributory negligence, and the Claimants' failure to mitigate their alleged damages.

Respondent Pinnacle also made a Crossclaim against Respondent Brooks for any damages that Pinnacle was found liable.

RELIEF REQUESTED

Claimant Shirley Sellers Carpenter requested compensatory damages in the amount of \$250,000.00 and punitive damages in the amount of \$250,000.00. Claimant Diane Carson requested compensatory damages in the amount of \$200,000.00 and punitive damages in the amount of \$250,000.00. Claimants also requested attorneys' fees.

Respondent Brooks requested that the Claimants' claims against him be dismissed, and all costs related to the arbitration proceeding be assessed against Claimant Shirley Sellers Carpenter.

Respondent Shearson requested that the Claimants' claims against it be dismissed.

Respondent Legg Mason requested that the Claimants claims against it be dismissed, and all costs related to the arbitration proceeding be assessed against the Claimants, in addition to other awards that the arbitration panel may deem proper.

Respondent Pinnacle requested that the Claimants claims against it be dismissed, and all costs related to the arbitration proceeding be assessed against the Claimants, in addition to other awards that the arbitration panel may deem proper. Respondent filed a Crossclaim against Respondent Brooks requesting indemnification.

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 originals remain on file with the NASD.

The panel considered the Motion to Dismiss Legg Mason Wood Walker and the Pinnacle Group and the responses thereto, and at the hearing session on February 21, 1996, the panel dismissed all claims against the Pinnacle Group and Legg Mason Wood Walker.

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. That the issues of unauthorized trades were resolved to Claimants' satisfaction and thus are denied.
2. That there has been no evidence to support the claims of churning or failure to supervise and thus these claims are denied.
3. That there has been no evidence to support the claim of fraud or constructive fraud and thus these claims are denied.
4. That the claim of breach of fiduciary duty cannot be sustained since this panel is of the opinion that at the time they were made these investments were appropriate. Every person is charged with the knowledge that there is risk in any investment.
5. Each party is responsible for their own costs, including attorney's fees.
6. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

16 sessions	X	\$1000	=	\$16,000.00
credit deposit paid by Claimants			=	\$ 1,000.00
Net Assessment due NASDR				<u>\$15,000.00</u>


Forum Fees are assessed to Claimants in the following proportions. Claimant Carpenter has a net assessment due of \$10,000.00 and Claimant Carson has a net assessment due of \$5,000.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

7/8/96


Simone Sicola, Presiding
Public Arbitrator

John F. Snyder
Public Arbitrator

John M. Mathews
Industry Arbitrator

Date Award Served by the NASD:

July 16, 1996

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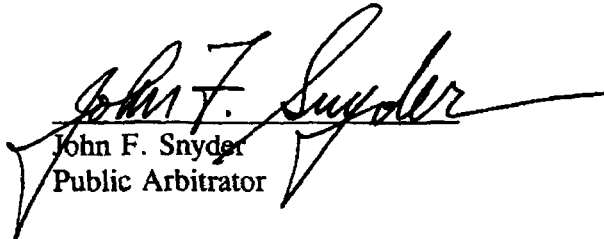
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CONCURRING ARBITRATORS' SIGNATURES

Simone Sicola, Presiding
Public Arbitrator

7/9/96



John F. Snyder
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John M. Mathews
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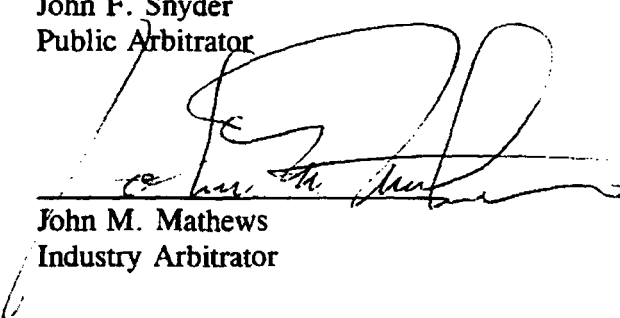
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