

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Deborah West

93-04289

Name of Respondents

Shearson Lehman Brothers, Inc.  
Curtis Pope

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 18, 1993, Claimant Deborah West, through her representative, Thomas Donohue, Esq., alleged that Respondents Shearson Lehman Brothers, Inc. and Curtis Pope failed to execute a transaction. Claimant further alleged that Respondent Curtis Pope ("Pope") was her full service broker from the early 1980's to 1992 and was responsible for her interests as well as for a family trust. The Claimant contended that Pope recommended the sale of all of her Colonial Government Securities Plus Trust shares as the value had decreased. Claimant further contended that she agreed with the recommendation and believed that all of the shares were sold. Claimant alleged that in October of 1992, both she and Pope were shocked to learn that all of the shares had not been sold. Claimant further alleged that if the shares had been sold and the proceeds were used to reduce her margin account, she would have avoided a substantial loss of wealth. As a result of the above, Claimant contended that she has suffered damages for which the Respondents should be held liable.

Respondents Shearson Lehman Brothers, Inc. and Curtis Pope, through their in-house counsel Ann Parry, Esq., New York, New York, maintained that during the course of 1986, Claimant purchased through Respondents 15,718 shares of Colonial Government Securities Plus Trust ("the Fund"). Respondents further maintained that in two separate trades Claimant authorized first the sale of 7,445 shares on July 28, 1986, and then on March 25, 1987, the sale of all her remaining shares in the Fund held by Respondents. Respondents contended that since this second trade was for only 6,039 shares, leaving a balance of 2,234 shares, Claimant incorrectly attributed negligence to the Respondents in the execution of the trade when in fact, at the time of the sale of the first 7,445 shares, Claimant had 2,234 shares delivered out of her account

with Respondents and into her account with Colonial Group of Mutual Funds ("Colonial"). Respondents contended that the sale of the 6,039 shares on March 25, 1987 represented Claimant's entire position in the Fund held in her account with Respondents. Respondents maintained that the fact that the 2,234 shares were not sold was not due to any negligence on Respondents' part but rather to Claimant's own failure to keep track of where her assets were held. Respondents further maintained that Claimant originally named Colonial in this matter charging it with negligence and subsequently settled with Colonial for \$3,750.00. Respondents alleged that by alleging that Respondents should be held liable for Colonial's failure to provide her with statements, Claimant is attempting to reap a financial reward for herself. Respondents further alleged the Claimant's allegations that she would have used the money from the sale of the 2,234 shares to lessen her margin debt is speculative and her alleged damages are hypothetical. As a result of the above, Respondents contended that they should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Deborah West requested \$4,979.00 in actual damages, plus attorney's fees.

Respondents Shearson Lehman Brothers, Inc. and Curtis Pope requested that the claims of the Claimant be dismissed in their entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The Claimant's motion to reconsider the ruling on the Motion to Dismiss pursuant to Section 15 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure along with related documents was considered by the arbitrator. The ruling stands as originally decided.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas E. Mulvihill, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 5, 1993 and by the Respondents on January 27, 1994 and January 25, 1994.

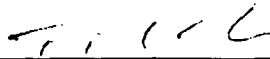
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Shearson Lehman Brothers, Inc. and Curtis Pope are jointly and severally liable and shall pay to Claimant Deborah West \$2,681.73 in actual damages.

2. Respondents Shearson Lehman Brothers, Inc. and Curtis Pope are jointly and severally liable and shall pay to Claimant Deborah West simple interest at the rate of 10% per annum from October 5, 1993 to October 5, 1994.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Shearson Lehman Brothers, Inc. and Curtis Pope are jointly and severally liable and shall pay to Claimant Deborah West \$125.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **THOMAS E. MULVIHILL**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



\_\_\_\_\_  
Signature of Arbitrator

**DATE OF DECISION:**

November 29, 1994