

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ivor A. and Linda B. Stoddard, Trustees for
The Brandt Family Trust

93-04335

Name of Respondents

Shearson Lehman Brothers, Inc.
Frederick Downes Iselin
Reese McGregor Stidham, III
The Robinson-Humphrey Company, Inc.

REPRESENTATION

For Claimants, Ivor A. and Linda B. Stoddard, Trustees for the Brandt Family Trust, appeared, Eric S. Bland, Esq., of the law firm Bland & Arndt, L.L.P. located in Columbia, South Carolina.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson"), Frederick Downes Iselin ("Iselin"), The Robinson-Humphrey Company, Inc. ("Robinson-Humphrey"), and Reese McGregor Stidham, III ("Stidham"), appeared, George C. Covington, Esq., of the law firm Kennedy, Covington, Lobdell & Hickman, L.L.P. located in Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed on: October 20, 1993.

Claimant, Trustee, Ivor Stoddard's, Submission Agreement signed on: October 13, 1993.

Respondents, Shearson, Robinson-Humphrey, Iselin, and Stidham's Joint Statement of Answer filed on: February 25, 1994.

Respondents, Shearson, Robinson-Humphrey, Iselin and Stidham, did not execute Submission Agreement as required by Rule 10314(b) of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions:

April 23, 1996 - 2 Sessions
April 24, 1996 - 2 Sessions
August 02, 1996 - 2 Sessions
August 03, 1996 - 2 Sessions

The hearing were held at the Hyatt Hotel and at the law offices of Kennedy, Covington, Lobdell & Hickman, LLP, located in Charlotte, North Carolina.

CASE SUMMARY

Claimants, Ivor A. and Linda B. Stoddard, Trustees for the Brandt Family Trust ("Claimants"), alleged that in 1986 they set up a trust account with Robinson-Humphrey a wholly-owned subsidiary of Shearson, through its employee Iselin. Claimants further alleged that Iselin was their financial advisor under the supervision of Stidham. Claimants also alleged that at the time they opened the account they had little direct personal investment experience and were relatively unsophisticated regarding investment and financial matters.

Claimants asserted that when they became clients of Iselin, Robinson-Humphrey and Shearson the Trust contained numerous "blue chip" common stocks, with a value of approximately \$3.5 million. Claimants further asserted that the stocks had a very low tax basis of under \$1.0 million and that the investment goals of the Trust were steady long term earnings with low risk and a reduction of taxes.

Claimants contended that on October 19, 1987, at approximately 3:00 PM, under Robinson Humphrey's supervision, the majority of the stocks in the Trust account were liquidated, without prior notice or consent of Claimants. Claimants further contended that there was a substantial market loss in the value of the account as compared to the value if it had been held through the October 1987 drop in the market, and still held today. Claimants also contended that the Trust incurred massive State and Federal tax liabilities, plus penalties and interest resulting from the liquidation. Claimants alleged that the sale was not in the best interest of the Trust or its beneficiaries, and that it appears to have been motivated by a desire to generate substantial commissions of approximately \$100,000.00. Claimants further alleged that the liquidation on October 19, 1987, was performed without their consent and at a time when the broker had not been granted discretion over the account.

Claimants also alleged that the income tax liabilities generated for the Trust by the broker from 1986 to 1990 were never discussed or disclosed to them. Claimants asserted that this was breach of the broker's duty as a fiduciary to the Trust. Claimants further asserted that they relied on the broker to keep track of tax consequences of the Trust. Claimants also asserted that as a result of the breach the Trust incurred tax liabilities in excess of \$1 million.

Claimants contended that following the October 1987 liquidation, a majority of the trust was transferred to Wedge Capital at the recommendation of Robinson-Humphrey. Claimants further contended that the methods by which the stocks were liquidated and the proceeds transferred generated brokerage commissions in the amount of \$25,000.00. Claimants also contended that these commissions were needlessly generated by the broker.

Claimants alleged that \$126,255.00 of dividend checks from the Rex-Hide Company ("Rex-Hide"), was diverted from the Trust's account, to another totally unrelated Shearson account during the period from 1987 to 1991. Claimants further alleged that some \$17,000.00 in interest was also subsequently deposited in the Trusts' account after the CPA for the estate brought the missing dividends to Iselin's attention.

Robinson-Humphrey, Shearson, Iselin and Stidham (collectively referred as "Respondents") maintained that in June 1986, Claimants set up the Trust account with Iselin and Robinson-Humphrey. Respondents further maintained that the Trust account had been established by Linda Stoddard's father in 1976 and its assets consisted primarily of equity positions that he had purchased over the years.

Respondents also maintained that in September 1987, Iselin became concerned about protecting the gain that the Trust account had experienced during the one-year period while at Robinson-Humphrey. Respondents contended that because of his concerns Iselin recommended that Claimants should reposition the account and put forty to forty-five percent of the assets in municipal bonds and forty-five to fifty percent of the assets with a money manager who could better diversify their equity holdings and lessen their exposure to any drastic downturn in the stock market. Respondents further contended that Iselin explained to Claimants that a money manager would charge a management fee based on the assets held in the managed account, therefore, Iselin recommended that the municipal bonds and managed money be held in separate accounts so that the Trust would not pay management fees for the municipal bonds that were simply to be bought and held.

Respondents also contended that after considering different money managers, Claimants chose Wedge Capital ("Wedge") and signed a Investment Advisory Agreement (the "Agreement") on October 5, 1987. Respondents maintained that pursuant to Iselin's recommendation, Claimants set up separate accounts. Respondents further maintained that in discussion with Wedge and Iselin, Claimants were told and understood that Wedge would construct a managed money portfolio for them in stocks which Wedge researched, analyzed and followed. Respondents also maintained that Claimants were told and understood that in order to raise the cash for Wedge to reinvest, a significant portion of the existing stock held by the Trust would be sold. Respondents contended that pursuant to the Agreement and the trading authorization given to Wedge by the Claimants, Wedge and Iselin sold positions in the Trust's account in October 1987. Respondents further contended that the proceeds to the managed account and Wedge immediately reinvested those funds into positions that were part of its managed money portfolio.

Respondents also contended that when the October 1987 transaction was complete, the Trust account with Robinson consisted of tax-free municipal bonds with staggered maturity dates. Respondents maintained that all the transactions in the account were conducted by Wedge pursuant to the trading authorization given to Wedge by Claimants. Respondents further maintained that the account statements for the bond account and the managed money account for the month ending of October 31, 1987 provide a clear road map of the transaction that have been described above.

Respondents also maintained that both the Claimants and their accountant received monthly statements that detailed the transactions of which the Claimants complain. Respondents contended that claimants received a written confirmation at the time of each purchase and sale in the two accounts. Respondents further contended that Claimants have received a year-end statement and an IRS 1099 form for every year that they have held an account with them.

Respondents also contended that by switching the Claimants assets, the conversion triggered a capital gains tax but, at the same time, significantly increased the after tax value of the assets in the account. Respondents maintained that the dividend Rex-Hide paid out was mailed directly to Shearson's New York Office without sufficient indication of the account to which the dividends should be credited. Respondents further maintained Shearson followed industry practice and deposited the funds into an escrow account until rightful ownership of the funds could be established. Respondents also maintained that from the year-end 1986, through year-end 1991, the value of the Trust assets increased from \$3,796,000.00 to \$5,914,000.00.

RELIEF REQUESTED

Claimants Ivor A. and Linda B. Stoddard, Trustees for the Brandt Family Trust requested: (1) \$1,527,000.00 in compensatory damages; (2) plus interest from October 1987, at the highest available rate of interest; (3) attorneys' fees; (4) \$750,000.00 in punitive damages; (5) all fees, costs and expenses incurred in pursuing this matter.

Respondents Shearson, Robinson-Humphrey, Iselin, and Stidham requested that all claims be dismissed in their entirety, with costs, including reasonable attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

1. The arbitrators have reviewed and considered all documentation submitted by the parties regarding Respondents' Motion to Dismiss pursuant to Rule 10304 of the NASD Code of Arbitration Procedure. The panel has denied Respondents' Motion to Dismiss.
2. 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.

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. Respondents, Shearson Lehman Brothers, Inc., The Robinson-Humphrey Company, Inc., Frederick Downes Iselin, and Reese McGregor Stidham, III, are jointly and severally liable and shall pay to the Claimants the sum of \$90,000.00, excluding interest;
2. Claimants request for punitive damages is denied;
3. Each party shall bear their respective costs, including attorneys' fees; and,
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 10332 of the NASD Code of Arbitration Procedure, the arbitrator panel has determined that the NASD shall retain the \$250.00 non-refundable filing fee previously deposited by the Claimants and the \$500.00 non-refundable filing fee previously deposited by Respondents Shearson, Robinson-Humphrey, Iselin and Stidham and have assessed the following Forum Fees.

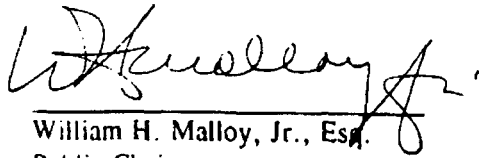
Hearing Session Fees: \$8000.00 (8 Sessions X \$1,000)

Claimants, Ivor A. and Linda Stoddard, are assessed the sum of \$2,666.67 representing one-third of the total forum fees due, less \$1,000.00 previously paid, leaving \$1,666.67 due. Claimants, Ivor A. and Linda Stoddard, are liable and shall pay the NASD the sum of \$1,666.67.

Respondents, Shearson Lehman Brothers, Inc., The Robinson-Humphrey Company, Inc., Frederick Downes Iselin, and Reese McGregor Stidham, III, are assessed the sum of \$5,333.33 representing two-thirds of the total forum fees due, less \$1,000.00 previously paid, leaving \$4,333.00

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

ARBITRATORS' SIGNATURES



William H. Malloy, Jr., Esq.
Public Chairperson


Leonard Landsman
Public Panelist

Thomas C. Borthwick
Industry Panelist

Date of Decision: December 16, 1996

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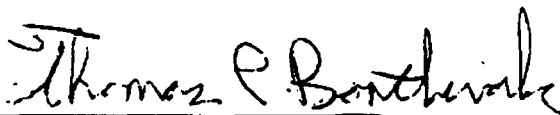
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