

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

David Raymon

93-04742

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Scott Elsas

REPRESENTATION

For Claimant David Raymon: John A. Owens, Esq., of the law firm of Phelps Owens Jenkins Gibson and Fowler, Tuscaloosa, AL.

For Respondents Shearson Lehman Brothers, Inc. and Scott Elsas: John P. Bevilacqua, Esq., in-house counsel at Smith Barney Shearson, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed: November 12, 1993.

Claimant's Submission Agreement signed on: November 9, 1993.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Scott Elsas on: March 22, 1994.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: March 18, 1994.

Respondent Scott Elsas's Submission Agreement signed on: March 14, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: October 18, 1994 / ^{OK} ~~Three~~ Sessions

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimant alleged the Respondents urged him to purchase 1,000 shares of common stock in Neurogen Corp. which he did. Claimant further alleged that he purchased 4,000 additional shares of Neurogen stock pursuant to Respondent Scott Elsas' representation that he would make a \$20,000.00 profit in 10 days. Claimant further alleged the stock did not perform as promised. Thereafter, Claimant alleged he frequently called Respondents and was told the promised profit would take a little longer than Respondents had originally anticipated. Claimant further alleged he eventually filed a complaint with Respondent Scott Elsas' compliance department at Shearson Lehman Brothers, Inc. who declined to take any remedial action. Claimant further alleged shortly thereafter he sold the stock for a loss of \$54,446.05. Claimant alleged he relied on the Respondents' misrepresentations and as a result of the Respondents' fraudulent conduct he sustained monetary damages. In addition, Claimant alleged Respondent Shearson Lehman Brothers, Inc. failed to adequately train and supervise its financial consultant Scott Elsas.

Respondents maintained Claimant is a sophisticated and experienced investor whose investment objective was "appreciation with risk". Respondents further maintained that Claimant authorized, approved and ratified all transactions. Regarding the Neurogen stock, Respondents maintained that Scott Elsas did recommend that the Claimant purchase Neurogen stock but at no time did he guarantee a profit within 10 days. Respondents further maintained given David Raymon's prior trading and his representations which Respondents relied upon, the investment in Neurogen stock was suitable for the Claimant. Respondents further maintained that when the stock rebounded to a position where the claimant could realize a slight profit or at least break even, the Claimant refused to sell despite Elsas' recommendation to do so. Thereafter, the Respondents maintained the stock continued to decline and Claimant refused to sell and the stock was liquidated in order to meet a margin call and, therefore, Claimant failed to mitigate his damages. Respondents further maintained they did not make any misrepresentations, omissions or misstatements with respect to Claimant's account and Claimant's comparative fault, lack of diligence and failure to conduct his financial affairs reasonably and responsibly bars any recovery of damages and to the extent that Claimant's account has diminished in value, such diminution is a

result, in whole or in part, of unforeseen market fluctuations. Respondents further maintained New York law which governs the dispute precludes a party from recovering punitive damages in an arbitration proceeding.

RELIEF REQUESTED

Claimant requested compensatory damages of \$54,446.05; \$20,000.00 promised profit; attorneys' fees, costs and interest; associated costs and expenses incurred in the purchase of the Neurogen stock; and, punitive damages in the amount of five times compensatory damages.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed against the Claimant.

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. All claims by the Claimant against the Respondents are dismissed in all respects.
2. The Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

3 sessions x \$750.00 = \$2,250.00 less Claimant's hearing session deposit (\$750.00) = net \$1,500.00 due.

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$375.00 representing his share of the balance of the forum fees.

The Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$1,125.00 representing their share of the balance of the forum fees.

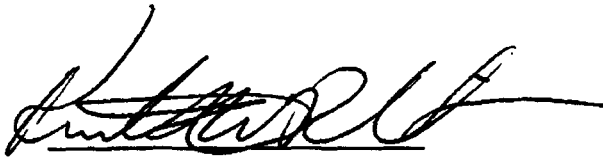
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Fees are payable to the National Association of Securities Dealers, Inc.

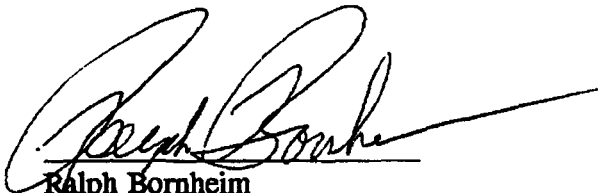
ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, appearing to read 'R. Kaye', written over a horizontal line.

Richard Allan Kaye, Esq.
Public Arbitrator

A handwritten signature in cursive script, appearing to read 'K. Rickert', written over a horizontal line.

Kenneth W. Rickert, Esq.
Public Arbitrator

A handwritten signature in cursive script, appearing to read 'Ralph Bornheim', written over a horizontal line.

Ralph Bornheim
Industry Arbitrator

Date of Decision: December 5, 1994