

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Israel Salei;  
Control Electronics, Inc.

93-05285

Name of Respondents

Shearson Lehman Brothers, Inc.;  
Charles Novak

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**REPRESENTATION**

For Claimant: Israel Salei ("Salei") and Control Electronics, Inc. ("Control") were represented by D. Michael Kratchman, Esq. of Southfield, Michigan.

For Respondent: Shearson Lehman Brothers Inc. ("Shearson") and Charles Novak ("Novak") were represented by Larry H. Irom, Esq. of Smith Barney, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed: December 22, 1993.

Claimant Salei's Submission Agreement signed on: December 17, 1993.

Claimant Control's Submission Agreement signed on December 17, 1993 by Israel Salei, President, Control Electronics, Inc.

Statement of Answer filed: April 18, 1994

Respondent Shearson's Submission Agreement signed on April 15, 1994.

Respondent Novak did not file an executed submission agreement.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held

Hearing Dates/Sessions: February 28, 1995 for Two (2) sessions;

March 1, 1995 for Two (2) sessions;

March 2, 1995 for One (1) session.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimants alleged that Respondent Novak, while employed by or acting as an agent for Respondent Shearson, engaged in excessive options trading and failed to warn Salei of the risks of option trading. Claimant further alleged that Respondent Shearson unilaterally froze Control's account upon receipt of a court order without contacting Salei, thereby jeopardizing Control's ability to operate by interfering with customer orders, preventing mortgage payments and a loss of business. Based upon the above allegations, Claimants asserted claims for violations of the high standard of case established by the NASD Rules of Fair Practice and the NYSE Rules; breach of fiduciary duty; common law fraud; violation of the Federal Securities Laws, in particular §10(b) of the Securities and Exchange Act and Rule 10b-5 promulgated thereunder; violation of the Michigan Securities laws; and violation of the Rico Statute, 18 USC §1962.

Respondents denied the material allegations of the Statement of Claim, asserting that Salei was an experienced options trader who was aware of the risks of engaging in options trading. Salei and Novak discussed all the trades and the vast majority of trades were unsolicited. Respondents further alleged that Salei was a frequent visitor to the Shearson office and followed the market by computer. In addition, Claimants received confirmations disclosing each transaction and never complained. In regard to Control's claim, Shearson alleged that it was obligated to follow the dictates of a lawfully issued court order or be held in contempt of court.

Respondents asserted several affirmative defenses, including the following:

1. Claimants failed to state a cause of action upon which relief can be granted;
2. Claimants assumed the risks inherent in trading securities and the losses sustained were caused by such risks and
3. The Claims are barred by the doctrines of ratification, waive and estoppel.

### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents for compensatory damages in excess of \$480,000.00; interest at 12%; costs; actual attorneys' fees as allowed by Panel; and exemplary and punitive damages as allowed by the Panel.

Respondents requested that the Statement of Claim be dismissed and all reasonable costs and expenses be assessed against Claimants.

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

Respondent Novak did not file an executed submission agreement, but did file an answer and appear at hearing. Pursuant to Section 12 of the NASD Code of Arbitration Procedure, Respondent Charles Novak is required to submit to arbitration.

On March 29, 1995, Claimants filed a Motion to Bar Respondents from filing their Post Hearing brief for failure to file in a timely manner. Respondents filed a reply on April 4, 1995. On April 21, 1995, the panel determined that the Motion would be granted.

On April 24, 1995, the Respondents filed a Motion to Reconsider the Decision to Bar Respondents' Brief. Claimants filed a Response on April 27, 1995. Upon review of the Motion, the Panel reaffirms the previous decision and Respondents Motion to Reconsider is denied.

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 the post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
3. Any relief not specifically granted is hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Five (5) hearing sessions x \$750.00 per session = \$3,750.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee,

the \$750.00 hearing session deposit, and the \$50.00 overpayment previously deposited by the Claimants, Israel Salei and Control Electronics, Inc. Claimants Israel Salei and Control Electronics, Inc. are liable for and shall pay to the NASD the sum of \$1,075.00 as additional forum fees. Respondents Shearson Lehman Brothers, Inc. and Charles Novak are jointly and severally liable for and shall pay to the NASD the sum of \$1,875.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Kenneth J. Safran, Esq.

July 24, 1995

Kenneth J. Safran, Esq.

Public Arbitrator

Chairperson

/s/ Jerome D. Sobczak

July 20, 1995

Jerome D. Sobczak

Public Arbitrator

/s/ Joseph R. Papo

July 19, 1995

Joseph R. Papo

Industry Arbitrator

For NASD Use Only

Date of Decision: July 26, 1995