

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Seymour Sobel
Jay and Barbara Stein
Robert Chaut

vs.

Award No.
93-05302

Name of Respondents

Smith Barney Shearson, Inc.

REPRESENTATION

For Claimants, Seymour Sobel ("Sobel"), Jay and Barbara Stein ("Steins"), Robert Chaut ("Chaut") (collectively "Claimants"), appeared Robert E. DeRight, Esq. from the law firm of Epstein Becker & Green, P.C., located in New York, New York.

For Respondent, Smith Barney Shearson, Inc. ("Respondent"), appeared Larry H. Irom, Esq. of Smith Barney Shearson, Inc., located in New York, New York.

CASE INFORMATION

Statement of Claim filed was filed by the Claimants on December 22, 1993.

Claimant Seymour Sobel's Submission Agreement was signed on December 13, 1993.

Claimant Robert Chaut's Submission Agreement was signed on December 14, 1993.

Claimants Jay and Barbara Stein's Submission Agreement was signed on December 16, 1996.

Statement of Answer was filed by Respondent Shearson Lehman Brothers, Inc. on April 8, 1994.
Respondent Smith Barney Shearson, Inc.'s Submission Agreement was signed on April 4, 1994.

HEARING INFORMATION

Pre-Hearing Conference: May 3, 1995

One session (Panel)

Hearing Dates/Sessions:	September 7, 1995	-	Two sessions
	September 8, 1995	-	Two sessions
	October 12, 1995	-	Two sessions
	November 27, 1995	-	Two sessions
	November 28, 1995	-	Two sessions
	February 5, 1995	-	Two sessions
	February 6, 1995	-	Two sessions
	March 6, 1996	-	Two sessions
	April 8, 1996	-	Two sessions
	May 10, 1996	-	Two sessions
	May 17, 1996	-	Two sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc., located in New York, New York.

CASE SUMMARY

Claimants alleged that the disputes arose out of breaches of fiduciary duty, and fraud and misrepresentation perpetrated by Respondent. Claimants further alleged that Respondent induced them to buy high-yield bonds of Service America Corp. ("ServAm") in which they invested an aggregate amount of \$898,301.00.

Claimants alleged that the Respondent knew of financial difficulties being experienced by ServAm, and yet the Respondent continued to sell the bonds by concealing facts about ServAm's financial difficulties and representing to the Claimants that the ServAm bonds met the Claimants' investment criteria. Claimants also allege that Respondent sold these ServAm bonds even though Respondent's own institutional group refused to carry ServAm in its inventory or offer such bonds to its customers. Claimants further alleged that the Respondent attempted to fix the value of ServAm bonds in its inventory at a high price for year-end profit and bonus purposes, and as a result the Respondent's High Yield Bond Department strongly recommended and pushed the ServAm bonds "without regard for accuracy in description and at prices far in excess of both other prices available in the market contemporaneously and prices which ... [Respondent] was electing to pay its institutional customers upon return of bonds of the same issue." Claimants contend that this was done to help the "high ranking individuals" from the Respondent company who also owned ServAm bonds, by temporarily raising the bond values.

Claimants alleged that the Respondent listed in the Claimants' monthly statements fictitious high values for the ServAm bonds, which induced the Claimants' to retain these bonds while their market values eroded.

Respondent alleged that each one of the Claimants was an experienced investor, who had previously invested in high yield bonds, and as such realized the risks involved with such bonds. Respondent contended that claimants had previously made profits on their bonds' trades, but when Claimants lost money on ServAm bonds, they decided to sue the Respondent. Respondent

specifically denied allegations that its "high ranking individuals" had taken a substantial position in these bonds, that it mispriced the ServAm bonds, that it manipulated the market or favored institutional investors.

In addition, Respondent asserted six affirmative defenses, including arguments that Claimants knowingly assumed the risk, Claimants accepted every transaction, Claimants failed to mitigate their damages, and that there was no private right of action for violation of NASD rules.

RELIEF REQUESTED

Claimants requested damage award of \$898,301, with interest at the coupon rate of the bonds from the pertinent dates of purchase. In addition, Claimants asked for relief pursuant to NASD rules, including but not limited to punitive damages, fines and costs, and costs related to the arbitration proceedings.

Respondent requested that the claim be dismissed, and that the Claimants be assessed all costs arising from the arbitration proceedings.

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. The Claimants' claim is denied in full.
2. Each party shall bear their own costs, including attorneys' fees.
3. All other claims for relief are denied.

OTHER FEES

Claimants were assessed administrative fees of \$135, which was paid in full.

Respondents were assessed administrative fees of \$180, which was paid in full.

Postponement fees of \$1000 are assessed against the Claimants, collectively.

Postponement fees of \$1000 are assessed against the Respondent.

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

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee previously deposited by Claimants, and have assessed the following forum fees:

1 Pre-hearing Conference:	\$300.00
22 sessions @ \$1000:	\$22,000.00
minus deposit paid by claimants:	<u>\$1,000.00</u>
Total fees outstanding:	\$21,300.00

Claimants jointly and severally be and hereby liable to the NASD for the sum of \$11,150.00, representing half of the forum fees assessed. Claimants made a deposit of \$1,000.00. Therefore, claimants owe \$10,150 to the NASD plus \$1,000.00 in postponement fee.

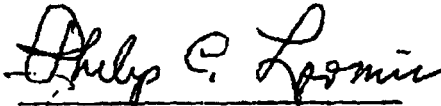
Respondents be and hereby liable and shall pay to the NASD \$11,150, representing one half of the forum fees assessed plus \$1,000.00 postponement fee.

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ARBITRATION PANEL

Neil J. Carey	-	Public Chairperson
Edward G. Toptani, Esq.	-	Public Panelist
Philip C. Loomis, CFA	-	Industry Panelist

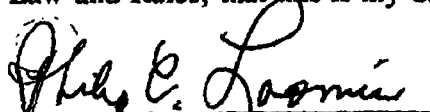
Concurring Arbitrator's Signature


Philip C. Loomis, CFA

Date of Decision: July 23, 1996

AFFIRMATION

I, _____, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.


Philip C. Loomis, CFA

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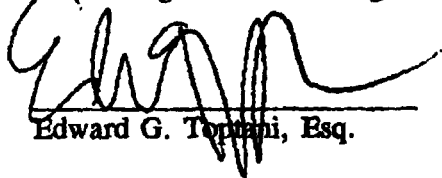
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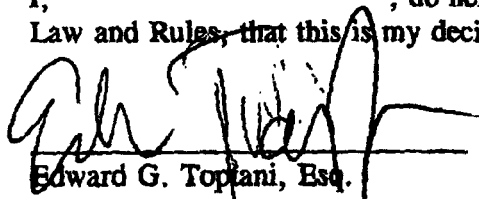
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