

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary H. Norch

94-01799

Names of Respondents

Shearson Lehman Brothers, Inc.,
Smith Barney Shearson, Inc.,
Frederick Bobrek,
Anthony Gilbert, and
Rodney Gray

REPRESENTATION

Claimant, Mary H. Norch was represented by David Hilton, Esq. of El Paso, Texas.

Respondents, Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson, Inc., Frederick Bobrek, Anthony Gilbert, and Rodney Gray were represented by Sean J. Coughlin, Esq. of Smith Barney Shearson, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant, Mary H. Norch on May 13, 1994.

Claimant, Mary H. Norch's Submission Agreement was signed on May 9, 1994.

A Joint Statement of Answer was filed with the NASD by Respondents, Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson, Inc., Anthony Gilbert, Rodney Gray and Frederick Bobrek on September 21, 1994.

Respondent, Anthony Gilbert's Submission Agreement was signed on September 23, 1994.

Respondent, Frederick Bobrek's Submission Agreement was signed on October 7, 1994.

Respondent, Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson's Submission Agreement was signed on September 20, 1994 by Sean J. Coughlin, Esq.

Respondent, Rodney Gray's Submission Agreement was signed on October 7, 1994.

HEARING INFORMATION

The hearing was held on August 17, 1995 for two (2) hearing sessions.

The hearing location was Dallas, Texas.

CASE SUMMARY

Claimant, Mary H. Norch ("Norch") alleged that Respondent, Shearson Lehman Brothers, Inc. n/k/a Smith Barney Shearson, Inc. ("Shearson") and Respondent, Frederick Bobrek ("Bobrek") wrongly kept her account on margin and made unlawful trades resulting in losses to her account. Norch also alleged that Shearson and Respondent, Anthony Gilbert ("Gilbert") allowed Bobrek to keep her account on margin and failed to supervise Bobrek. Norch alleged that these activities continued after her account was transferred to the Shearson branch manager in El Paso, Texas, Respondent, Rodney Gray ("Gray").

Respondents, Shearson, Bobrek, Gilbert and Gray denied any liability to Norch in their Answer. Respondents alleged that Norch changed her cash account to a margin account to raise funds to purchase an automobile. Norch paid off the margin loan, but never requested that the account be redesignated a cash only account. Thus, Norch maintained the right to purchase additional stocks on margin. After Norch bought and sold shares in several different stocks and mutual funds, a margin balance was again created in her account. Norch complained about her margin balance to Gilbert and Bobrek and sufficient mutual funds were sold to pay off the cost of the new stock purchases. Gilbert then credited Norch's account with the interest charged on the sale and changed her account to a cash only account. Norch was also reimbursed for all costs that her margin account incurred in 1991. In addition, Bobrek reimbursed Claimant for losses she incurred in 1991 on options out of his personal account without the knowledge of or consent of Gilbert, Gray or any officers of Shearson. Later in 1992 Bobrek reimbursed Norch for all commission fees associated with her purchase of a particular stock without the knowledge of or consent of Gilbert, Gray or any officers of Shearson.

In 1994 Shearson, Bobrek, Gilbert and Gray alleged that Gray told Norch that Shearson would no longer handle her account. Gray alleged that any losses Norch incurred while he managed the account were based on Norch's delay in withdrawing or transferring her account. Shearson, Gilbert, Gray and Bobrek by way of affirmative defenses alleged that Norch failed to state a claim as a matter of law, failed to mitigate damages, assumed the risk of any losses

she incurred and is precluded from recovering punitive damages.

RELIEF REQUESTED

Norch requested \$100,00.00 in actual damages and \$200,00.00 in punitive damages and sought attorneys fees and costs.

Shearson, Gilbert, Gray and Bobrek requested that all claims be dismissed and that they be awarded their costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

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.

The claimant did not appear at the hearing on August 17, 1995 in Dallas, Texas. Claimant's attorney requested that the claimant appear via telephone. The panel denied the request and the hearing proceeded in claimant's absence.

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. Norch's Statement of Claim and Request for Relief is denied and dismissed in its entirety;
2. The panel specifically finds that there was no basis in fact to support the allegations asserted against Respondents, Anthony Gilbert and Rodney Gray by Claimant, Mary Norch; and,
3. Other than the forum fees which are set forth below, each of the parties shall bear their own costs and expenses incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, forum fees are calculated at the rate of \$750.00 per hearing session. There were two hearing sessions for a total of \$1500.00 in Forum Fees. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously deposited with the NASD by Norch. Bobrek is assessed and shall pay to the NASD, the sum of \$750.00 as additional Forum Fees.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

/s/ Winston C. Fournier
Winston C. Fournier
Presiding Chairperson
Public Arbitrator

August 29, 1995
Dated

/s/ Joe S. Shepherd
Joe S. Shepherd
Panelist
Public Arbitrator

August 29, 1995
Dated

/s/ David J. Powell
David J. Powell
Panelist
Industry Arbitrator

August 29, 1995
Dated

For NASD Use Only

Date Award Served on the Parties by the NASD: August 29, 1995

Affirmation

STATE OF

} SS:
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COUNTY OF

I, Emily B. Boone, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.

Emily B. Boone
Signature of Arbitrator

DATE OF DECISION: June 29, 1995