

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Carl P. Summers

95-01573

Name of Respondents

Daniel L. Caso
Lehman Brothers, Inc.

REPRESENTATION

For claimant Carl P. Summers ("claimant") appeared Anthony J. Hartman, Esq. of the law firm of Hermann, Cahn & Schneider located in Cleveland, Ohio.

For respondents Lehman Brothers, Inc. ("Lehman") and Daniel L. Caso ("Caso") appeared William A. Olshan, Esq., Vice President/Associate General Counsel of Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed: March 28, 1995.

Claimant's Submission Agreement signed on: March 27, 1995.

Joint Statement of Answer filed by respondents Lehman and Caso on: June 15, 1995.

Respondents Lehman and Caso did not file executed Submission Agreements with the NASD.

HEARING INFORMATION

Hearing Dates/Sessions:	February 12, 1996	-	Two Sessions
	February 13, 1996	-	Three Sessions
	February 27, 1996	-	Two Sessions

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

CASE SUMMARY

Claimant alleged that he was introduced to Lehman through a solicitation by a Lehman financial consultant, David Jacobs ("Jacobs"). Claimant further alleged that he told Jacobs that he was unwilling to take much risk with his money and that he wanted diversified investments designed to promote his objectives of preservation of capital and moderate growth. Claimant maintained that he authorized Jacobs to exercise discretionary authority over his account and that he signed a discretionary Account Information Sheet which listed his objectives as "long-term capital gains", "income" and "short term capital gains involving a high degree of risk and trading activity", which was in direct opposition to the objectives he stated to Jacobs.

Claimant alleged that, in the Fall of 1991, his account was assigned to Caso and that, in late 1992, he became aware for the first time of the high risk securities in his account. Claimant further alleged that he questioned Caso about the investment strategy for his account and was told not to worry because all of the stocks in his account were rated by Lehman as "buys". Claimant maintained that, despite Caso's assurances, the value of the account continued to drop. Claimant further maintained that he closed his account in February 1994, after having incurred losses in excess of \$1,000,000.00.

Claimant alleged that respondents were negligent and violated their fiduciary duties owed to him. Claimant further maintained that, contrary to his request for a diversified portfolio designed to achieve moderate growth while preserving capital, respondents assembled an undiversified, high-risk portfolio heavily laden with speculative investments.

Respondents denied any and all allegations of wrongdoing and maintained that they handled claimant's account properly at all times. Respondents further maintained that, at the time claimant's account was opened, claimant told Jacobs that he was willing to accept risk in order to accomplish his investment objective of capital appreciation. Respondents also maintained that claimant fully understood and accepted the substantial risks of investing in securities and provided Jacobs with authorization to trade equity and index options in his account.

Respondents maintained that, because Caso did not have discretionary authority over claimant's account, Caso discussed each and every transaction with claimant prior to its execution and never implemented a transaction without claimant's prior express approval. Respondents further maintained that each recommendation made to claimant was based upon the best available research and Caso's belief that the investment would provide an excellent opportunity for claimant to achieve his investment objectives. Further, respondents maintained that, in five separate letters, claimant expressly confirmed that he understood the risks inherent with his investments and that the investments were consistent with his objectives.

As affirmative defenses, respondents maintained that the Statement of Claim failed to state claim upon which relief could be granted; that claimant had full knowledge of all material facts concerning his investments, including the nature of those investments, as well as the associated risks; that claimant authorized the execution of all transactions in his account; that claimant received confirmations and monthly statements advising him if he had any objections to contact

respondents immediately, which he never did; and that they did not make any misrepresentations, omissions or misstatements with respect to the investments made in claimant's account.

Respondents further maintained that the claims were barred because the alleged misrepresentations were expressions of opinion and not fact and that they were not material; that the losses which occurred in claimant's account were within the risk claimant assumed; that the losses were the result of unforeseen market fluctuations; that the claims were barred by the applicable statute of limitations; that claimant's comparative fault, lack of diligence and failure to conduct his own affairs reasonable and responsibly barred any recovery of damages; and that claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested compensation from respondents in the sum of \$1,000,000.00 for his losses, together with reimbursement of all costs and fees to be assessed by the NASD for these proceedings.

Respondents requested that claimant's claims be dismissed in their entirety and that they be awarded their reasonable costs and attorneys' fees incurred in defending this action.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrators made the following rulings as to respondents Lehman and Caso, who failed to file submission agreements with the NASD:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that, at the time this controversy arose, Lehman was a member of the NASD and Caso was a person associated with a member of the NASD. Consequently, the panel found personal jurisdiction over Lehman and Caso pursuant to Section 12(a) of the Code which required Lehman and Caso to arbitrate at this forum upon demand of the customer claimant.
3. In view of (2) above, Lehman and Caso were each required to execute and file a submission agreement with the NASD pursuant to Section 25(b) of the Code. In this regard, the panel found that Lehman and Caso were served with the Statement of Claim pursuant to Section 25(a) of the Code.

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

1. Respondents Lehman and Caso be and hereby are jointly and severally liable and shall pay to claimant the sum of \$53,704.00.
2. Each party shall bear their own costs, including attorneys' fees.
3. All other claims are hereby denied.

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 submitted by claimant and have assessed the following forum fees:

$$7 \text{ hearing sessions} \times \$1,000.00 = \$7,000.00$$

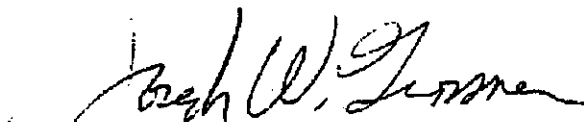
1. Claimant be and hereby is liable for the sum of \$3,500.00, representing one-half of the amount of forum-fees assessed. Claimant previously deposited \$1,000.00 with the NASD and, therefore, claimant is liable and shall pay to the NASD the sum of \$2,500.00.
2. Lehman and Caso be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$3,500.00, representing one-half of the amount of forum fees assessed.

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

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Arbitrators' Signatures

Thomas C. Wagner, Esq.
Public Arbitrator



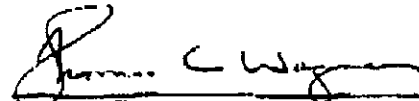
Joseph W. Grossner
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Date of Decision: May 15, 1996

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