

AMERICAN STOCK EXCHANGE, INC.

IN THE MATTER OF ARBITRATION BETWEEN)
DONALD & BARBARA J. DUKES,)

CLAIMANTS,)

-and-)

SHEARSON LEHMAN BROTHERS,)
MARILYN CARTER-LARSON and)
SMITH BARNEY, INC.,)

RESPONDENTS.)

DECISION
OF
ARBITRATION PANEL

95-12

The Arbitration Panel, comprised of Mary Fay, George A. Abbott and John C. Burke, Chair, unanimously finds in favor of the Respondents and against the Claimants.

The Arbitration Hearing was held on August 22nd and August 23rd and extended over a period of approximately fourteen (14) hours. All parties were represented by legal counsel.

COUNT I

That the acts complained of were done knowingly by the Respondents with the intent to deceive and defraud the Claimants.

FINDING

There was not a scintilla of competent evidence presented of any acts of the Respondents done with the intent to deceive or defraud the Claimants.

COUNT II

That the acts complained of violated the Iowa Securities Laws.

FINDING

This subject was not addressed by the Claimants.

COUNT III

That the intentional conduct by the Respondents

constituted fraud, constructive fraud, churning and the infliction of emotional distress.

FINDING

Again, not a scintilla of competent evidence was presented of any acts of the Respondents done with the intent to defraud or inflict emotional distress upon the Claimants.

The Claimants' expert witness, Richard A. Stevenson, expressed the opinion that Marilyn Carter-Larson's conduct did not amount to "churning." Over a period of several years only one (1) possible purchase was made without the prior consent of the claimants and no complaint was registered concerning that purchase.

COUNT IV

That the Respondents' actions and conduct constituted a breach of the written contract existing between the parties.

FINDING

The Claimants did not sustain their burden of proof on this Count.

COUNTS V and VI

That the conduct of the Respondents constituted neglect and intentional misrepresentations and nondisclosure of material facts and violated common law professional duties.

FINDING

The Claimants did not sustain their burden of proof on these Counts.

COUNT VII

That the Respondents violated their fiduciary duties owed to the Claimants.

FINDING

Again, not a scintilla of competent evidence was presented to support this Count.

DAMAGES

The Claimants' expert sought to find damages by using an "Under Performance of Asset Allocation" approach.

In assessing Marilyn Carter-Larson's stock selections he opined that her selections "were not great" and should have included more "blue chip" stocks.

The evidence was conflicting whether or not the Claimants suffered any "out of pocket" losses.

While damages need not be proved with mathematical certainty, they cannot be established by speculation or conjecture. There was no reasonable factual basis for computation of the loss. Consequently, there is uncertainty in the minds of the Panel as to the fact of whether damages were sustained at all. The absence of such proof is fatal to the recovery of damages.

COSTS

The Panel finds that each party should pay its own costs.

On December 17, 1992, the Claimants addressed a letter to Mr. Stanly Navrude, Manager and First Vice President of Shearson Lehman Bros. Inc. detailing their complaints concerning the handling of their accounts.

This complaint went unanswered and finally resulted in this Arbitration.

The Panel is of the opinion that had the complaint been addressed by Shearson Lehman in 1992 and the broker's action explained in some detail, this legal dispute and the resulting expense might well have been avoided.

DATED this 31 day of August, 1995.

ARBITRATION PANEL:

John C. Burke
John C. Burke, Chair

Mary Fay
Mary Fay

George A. Abbott
George A. Abbott