

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Dan Anderson and Sharon Anderson  
Ricky J. Getchell and Nora S. Getchell

96-01693

Name of Respondents

Lew Lieberbaum & Co., Inc.  
Drew D. Chalmers  
Sovereign Equity Management Corp.

REPRESENTATION

For Claimants: Guy M. Burns, Esq. of the law firm of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, Tampa, Florida.

For Respondents Lew Lieberbaum & Co., Inc. ("Lew") and Drew Chalmers ("Chalmers"): Lawrence Sandor, Esq., in-house counsel at Lew.

For Respondent Sovereign Equity Management Corp. ("Sovereign"): George Guerra, Esq. of the law firm of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Clearwater, Florida.

CASE INFORMATION

Statement of Claim filed: April 19, 1996.

Claimants Nora S. and Ricky J. Getchell's Submission Agreements signed on: April 23, 1996.

Claimants Daniel and Sharon Anderson's Submission Agreements signed on: April 28, 1996.

Respondent Lew's Statement of Answer filed on: July 8, 1996.

Respondent Drew Chalmer's Statement of Answer filed on: August 27, 1996.

Respondent Sovereign's Statement of Answer to Claimants Dan and Sharon Anderson's Statement of Claim dated July 17, 1996.

Respondent Sovereign's Statement of Answer to Statement of Claim of Ricky J. and Nora S. Getchell's Statement of Answer dated: July 17, 1996.

Respondent Lew's Submission Agreement signed on: July 5, 1996.

The Respondents Chalmers and Sovereign did not execute Submission Agreements as required pursuant to Section 10314 of the Code of Arbitration Procedure.

### **HEARING INFORMATION**

Two pre-hearing conferences were conducted on January 10 and February 25, 1997 and six hearing sessions were conducted on March 4, 5 and 6, 1997 in Tampa, Florida.

### **CASE SUMMARY**

Claimants Dan Anderson and Sharon Anderson, Ricky J. Getchell and Nora S. Getchell asserted claims for negligence and gross negligence, negligent supervision, breach of fiduciary duty, common law fraud, violations of Chapter 517 of the Florida Statutes, and violations of Sec. 772.102, et seq. of the Florida Statutes (Civil Remedy for Criminal Practices) against Respondents. Claimants alleged they were unsophisticated and totally inexperienced investors who relied on the advice and experience of Respondents. Claimants alleged that Mr. Anderson and Mr. Getchell were Home Depot employees who had acquired sizable amounts of stock in Home Depot through an incentive stock option plan and at the time of opening their accounts, Claimants advised Respondents that they wanted to protect their Home Depot stock, that they only wanted to invest in safe and secure investments and in a program that would produce modest returns without placing their Home Depot stock at risk. Claimants alleged their accounts were non-discretionary; however, Respondents traded in the accounts in a discretionary manner, incurring margin interest and losses to such an extent that a significant portion of Claimants' Home Depot stock had to be liquidated. In addition, the Claimants alleged the investments purchased were unsuitable and inappropriate for Claimants, involved a high degree of risk, Respondents failed to disclose material facts relating to the investments, and misled Claimants with regard to the safety and security of their investments.

Respondents Lew Lieberbaum and Drew Chalmers maintained that the Claimants, all Florida residents, made allegations of suitability, unauthorized trading, and fraud against Respondents. Respondents Lew and Chalmers maintained that both sets of Claimants opened accounts at Lew Lieberbaum & Co., Inc.; both sets of Claimants had Drew Chalmers as their registered representative; and, both sets of Claimants transferred their accounts to Sovereign when Drew Chalmers left and went to Sovereign.

Respondents Lew and Chalmers maintained that in approximately October, 1992, the Andersons opened an account with Lew and that Drew Chalmers, their registered representative, had known Dan Anderson for approximately nine years, having met him while they both were employed by Home Depot. Respondents Lew and Chalmers maintained that Mr. Chalmers spoke with the Andersons about investments and their risk and Claimants informed Mr. Chalmers that Mr. Anderson made \$55,000.00 as the store manager of a very successful Home Depot branch and he further stated that he had a net worth of approximately \$500,000.00. Moreover, Respondents

Lew and Chalmers maintained that Sharon Anderson was a Claims Adjuster with Aetna Life and Casualty, she had eight years of insurance experience, held a Florida State Adjusters License, and was a Total Loss Specialist. Respondents Lew and Chalmers maintained she was very knowledgeable about market risks, and claimed to understand these risks when Mr. Chalmers discussed them with her and Mr. Anderson.

Respondents Lew and Chalmers further maintained Mr. Chalmers made recommendations to the Andersons based upon their personal and financial background, as well as their investment objectives and each trade executed within their account was authorized. Respondents Lew and Chalmers next maintained that during the time that their account was held at Lew, the Andersons never complained about unauthorized trades and they were sent confirmations after each trade, and they received monthly statements at the end of each month and the Andersons seemed very happy with their relationship with Mr. Chalmers and even followed him to Sovereign.

Respondents Lew and Chalmers next maintained in approximately June, 1992, the Getchells opened an account with Lew and they claimed to have a net worth of \$150,000.00. Respondents Lew and Chalmers next maintained that Rick Getchell was a manager with Home Depot and his professional experience included calculating cost projections and Profit and Loss analyses and he was a sophisticated businessman with over eleven (11) years of business management experience. Respondents Lew and Chalmers maintained the Getchells informed Mr. Chalmers that they were seeking growth and income and, accordingly, Mr. Chalmers recommended securities which had the potential of meeting those objectives and he also discussed the risk factors associated with each recommendation.

Respondents Lew and Chalmers next maintained throughout the next few months, the Getchells made several speculative investments and, in fact, the Getchells signed a letter which stated that they understood that the securities in their portfolio were speculative, and they approved of these purchases. Respondents Lew and Chalmers next maintained during the entire time the Getchells had an account at Lew, they never objected to any transaction executed in their account and in fact, Mr. Chalmers was in constant communication with them concerning the status of their account. Respondents Lew and Chalmers maintained the Getchells themselves asserted in their Statement of Claim that they "called Chalmers to have Chalmers explain their monthly statements concerning the trades and investments in their account" and maintained that Mr. Chalmers did indeed speak with them about all the transactions which took place in their account. Moreover, Respondents Lew and Chalmers maintained that when Mr. Chalmers left Lew and went to Sovereign, the Getchells took their account to Sovereign so that they could continue their relationship with Mr. Chalmers.

Respondent Sovereign maintained that Claimants alleged various causes of action premised on the allegation that Respondent Drew Chalmers while associated with Lew, and then later with Sovereign misled the Claimants, and otherwise failed to inform them of the actual risks associated with their portfolios. Respondent Sovereign asserted that the Claimants' accounts were handled in a manner consistent with their stated investment objectives on their signed new account forms and Sovereign also argued that during the entire nine months Claimants maintained accounts with Sovereign all trades were done with the full authority of the Claimants. In support of its position, Sovereign offered evidence that included (1) tax returns pre-dating Claimants' relationship with Sovereign, which reflected similar trading activity in their respective

accounts for one and one-half years prior to their relationship with Sovereign; (2) literature from Sovereign and its clearing firm explaining the nature of the Claimants' accounts, including margin; (3) monthly statements; (4) correspondence; and (5) confirmations, all of which the Claimants testified they ignored.

Respondent Sovereign next maintained that when contacted by Sovereign's branch manager, Claimant Dan Anderson expressed satisfaction with Mr. Chalmers and the way his account was being handled. Sovereign claimed that satisfaction was buttressed by the fact that the Andersons and the Getchells followed Mr. Chalmers from Lew to Sovereign, and then left Sovereign when Mr. Chalmers separated from the company.

### **RELIEF REQUESTED**

Claimants Dan Anderson and Sharon Anderson requested damages in the actual amount of \$170,652.00, inclusive of accrued interest. Claimants Ricky J. Getchell and Nora S. Getchell requested damages in the actual amount of \$19,769.00, inclusive of accrued interest. In addition to actual damages, Claimants requested an award of punitive damages, costs of \$14,845.00, and Claimants further requested that they be awarded an entitlement to attorney's fees pursuant to Chapter 517 of the Florida Statutes and/or pursuant to Section 772.102, et seq. of the Florida Statutes.

Respondent Sovereign requested a dismissal of all claims against them.

Respondents Lew and Chalmers requested that a judgment be entered against the Claimants.

### **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 original(s) remain on file with the NASD.

When this matter was originally filed, there were additional Claimants and an additional Respondent. The Respondents made a motion to sever which was granted by the arbitration panel.

Prior to the commencement of the first hearing session, the arbitration panel was informed that the Claimants had entered into a settlement agreement with the Respondents Lew and Chalmers.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by the Claimants Getchells against the Respondent Sovereign be and hereby are dismissed in all respects.

2. The Respondent Sovereign be and hereby is liable and shall pay to the Claimants Anderson the sum of \$31,159.00 plus pre-judgment interest in the sum of \$3,000.00 for a total sum of \$34,159.00.

3. The Claimants' requests for punitive damages are denied.

4. Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$5,550.00 (6 sessions x \$750.00 plus one pre-hearing conference-sole arbitrator (\$300.00) plus one pre-hearing conference-panel(\$750.00) are assessed as follows:

The Claimants Anderson are liable, jointly and severally, in the sum of \$2,775.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. in the sum of \$1,775.00

The Respondent Sovereign is assessed the sum of \$2,775.00.

The Respondent Sovereign is liable and shall pay to the NASD the sum of \$500.00 representing the member surcharge pursuant to Rule 10333 of the Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

/S/

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James F. Turner, III

Public

/S/

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Ron Pekoe

Public

/S/

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Joseph I. Amonette

Industry

April 24, 1997

Date of Decision: \_\_\_\_\_