

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Thomas H. Grant and Nitza (a/k/a Nancy) Grant

96-02583

Name of Respondents

Lehman Brothers, Inc.; and
Robert Perlman

REPRESENTATION

For Claimant: Thomas H. Grant ("Dr. Grant") and Nitza, also known as Nancy, Grant ("Mrs. Grant") were represented by Anthony S. DiVincenzo, Esq. of Campbell & DiVincenzo, located in Chicago, Illinois.

For Respondents: Lehman Brothers, Inc. ("Lehman") and Robert Perlman ("Perlman") were represented by Robert J. Mandel, Esq. of Neal Gerber & Eisenberg, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: June 17, 1996.

Dr. Grant's Submission Agreement signed on: May 24, 1996.

Mrs. Grant's Submission Agreement signed on: April 22, 1997.

Respondent Lehman's Submission Agreement signed on: September 27, 1996 by Thomas Hommel, Esq., Lehman Brothers, Inc.

Respondent Perlman's Submission Agreement signed on: September 27, 1996.

Statement of Answer filed by Respondents Lehman and Perlman on: September 27, 1996.

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Dates/Sessions: April 21, 1997 for Two (2) Sessions;
April 22, 1997 for Two (2) Sessions; and
May 15, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondent Perlman, while employed by or acting as an agent for Respondent Lehman, misrepresented the risks of certain investments in options, stocks, new issues, LEAPS and other derivatives. In addition, Grant alleged that Perlman made unauthorized trades by failing to consult with him before making the trades.

Respondents denied the material allegations of the Statement of Claim, alleging that Grant knowingly engaged in aggressive trading and received numerous confirmations of his aggressive and speculative objectives. Respondents asserted that letters were sent to Grant requesting that he confirm his account objectives ("appreciation with risk" and "speculative" on Claimant's New Account Application) and the transactions in his account. The letters were either returned affirming the actions taken in the account, or nothing was received stating the account was handled inappropriately. In addition, withdrawals made by Grant decrease the amount of losses claimed by the Claimant. Respondents also asserted several affirmative defenses, including the following:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimant was aware of the risks of the investments he made and any losses suffered by Claimant were within the risk assumed by him;
3. Claimant's claims are barred by the equitable principles of waiver, estoppel and ratification, and laches, or by applicable statute of limitations;
4. Any reduction in the value of Claimant's account is the result of unforeseen market fluctuations;
5. Claimant's comparative fault and lack of diligence bars any recovery of damages.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents for damages totaling \$67,152.00, plus interest at the rate of 5%.

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

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.

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 Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Respondent Lehman Brothers, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge in the sum of \$300.00 pursuant to Section 10333 of the Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:
Five (5) Hearing sessions x \$500.00 per session = \$2,500.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$150.00 non-refundable claim filing fee and shall retain as forum fees the \$500.00 hearing session deposit previously paid by the Claimants. In addition, Claimants Thomas H. Grant and Nitza (a/k/a Nancy) Grant are liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$750.00 as additional forum fees. Respondents Lehman Brothers, Inc. and Robert Perlman are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,250.00 as forum fees.

Concurring Arbitrators' Signatures
Name

Date

/s/ John K. Notz, Jr., Esq.
John K. Notz, Jr., Esq.
Public Arbitrator
Chairperson

May 15, 1997

/s/ Robert L. Agosto, Esq.
Robert L. Agosto, Esq.
Public Arbitrator

May 15, 1997

/s/ Jerome Stern
Jerome Stern
Industry Arbitrator

May 15, 1997