

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Ronald Oliva Sr., IRA

96-03069

Name of Respondents

Shearson Lehman Brothers, Inc.
Arthur Usherhoff

REPRESENTATION

For Claimant Ronald Oliva Sr., IRA ("Oliva"): Robert Wayne Pearce, Esq. of Lerner & Pearce, P.A., Fort Lauderdale, Florida.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Arthur Usherhoff ("Usherhoff"): Marion S. Chan, Esq. of Shearson Lehman Brothers, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: June 6, 1996.

Claimant's Submission Agreement signed on: June 21, 1996.

Joint Statement of Answer filed by Respondents on: September 10, 1996.

Respondent Shearson's Submission Agreement/Corporate Acknowledgment signed on: September 10, 1996 by Marion S. Chan on behalf of the firm.

Respondent Usherhoff's Submission Agreement signed on: August 5, 1996.

HEARING INFORMATION

On November 6, 1996 a pre-hearing telephonic conference lasting one (1) session was conducted with the arbitration panel.

On March 31, 1997 a hearing lasting three sessions was conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that this claim arose from Respondent Usherhoff's solicitation of Claimant to purchase \$100,000.00 face value R.H. Macy & Co., Inc. zero coupon bonds ("the Macy's bonds") in his IRA Rollover Account at Shearson; that Usherhoff represented that the Macy's bonds would be worth \$100,000.00 in July, 1993 and earn interest at a rate of 16.5% thereafter;

that at the time of solicitation Usheroff misrepresented and misled Oliva to believe that the investment in the Macy's bonds was consistent with Oliva's investment objectives for his retirement account; that Usheroff failed to advise Oliva that the Macy's bonds were unsuitable for his IRA Rollover Account because risks associated with the securities were inconsistent with his stated investment objectives of safety and income; that the Macy's bonds were speculative; that the trading of the Macy's bonds had been volatile prior to his investment; and, that R.H. Macy was under credit watch by the major credit rating agencies because the company was on the brink of bankruptcy; that Usheroff simply failed to exercise due diligence and advise Oliva of the material facts and risks of the investment before making his recommendation to Oliva. Claimant further alleged that Usheroff's recommendation of unsuitable securities for Oliva's IRA Rollover Account was a violation of the securities industry rules, regulations and Shearson's (now known as Smith Barney) own policies and procedures; that as a result, Usheroff violated Chapter 517.301, Florida Statute, which entitles Oliva to the remedies available under Sections 517.211 and 517.241, namely, rescission of \$84,966.00, rescissionary damages of \$66,851.00 or common law remedy of "Benefit of the Bargain" damages of \$142,823.00. Claimant further stated that he retained counsel prior to the hearing but did not submit the issue of attorneys' fees to the arbitrators and reserved the issue for the Courts under the Florida Arbitration Code.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant is an experienced investor who understood the nature and risks of his investment in the Macy's bonds; that at the time he purchased the bonds, Claimant was already familiar with the nature and risks of investing in zero coupon bonds; that in January 1991, Claimant approached Usheroff and told him that a friend had recently invested in zero coupon bonds issued by RJR Nabisco ("the RJR Bonds") and that he was interested in making a similar investment; that Usheroff explained the potential risks of investing in bonds like the RJR bonds, including the fact that since the bonds did not pay interest, the price of the bonds would be more sensitive to changes in interest rates; that on January 14, 1996, Claimant invested \$52,000.00 in the RJR Bonds; that less than two months later, Claimant sold his investment in the RJR bonds at a profit of \$10,122.15; that excited by his successful investment in the RJR bonds, Claimant approached Usheroff and asked him to recommend similar securities for his investment; that Usheroff discussed a possible investment by Claimant in the Macy's bonds which were followed by Smith Barney's research department; that after discussing the details of this security with Usheroff, including the risks of the security, Claimant invested \$52,000.00 in the Macy's bonds on September 5, 1996. Respondents further maintained that at the time Claimant decided to invest in the Macy's bonds, Claimant was aware of all risks and obligations of that investment; and, that in particular, Usheroff discussed with Claimant the fact that the Macy's bonds were rated below investment grade. Respondents contended that they can not be held responsible for Claimant's decision to "play the market" in the hope that the price of a particular security would rise; and, that the losses in Claimant's account were due solely to legitimate and unforeseeable market fluctuations for which Respondents should not be held liable.

RELIEF REQUESTED

Claimant requested damages as follows: rescission of \$84,966.00; rescissionary damages of \$66,851.00 or common law remedy of "Benefit of the Bargain" damages of \$142,823.00.

Respondents requested that the Statement of Claim be dismissed in its entirety and that Respondents be awarded their costs and reasonable attorneys' fees incurred in defense of this matter.

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 NASD Regulation, Inc.

AWARD

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

1. Respondents Shearson and Usheroff are found liable, jointly and severally, and shall pay to Claimant the sum of \$35,000.00 inclusive of pre-judgment interest.
2. Claimant's requests for rescission and common law remedy of "Benefit of the Bargain" damages are denied.
3. Respondents' requests for costs and reasonable attorneys' fees are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure ("Code"), the panel has assessed forum fees in the amount of \$3,000.00 (three (3) hearing sessions x \$750.00 + one (1) pre-hearing conference x \$750.00).

1. Respondents Shearson and Usherhoff are hereby assessed forum fees, jointly and severally, in the amount of \$2,000.00 payable to NASD Regulation, Inc.
2. Claimant is hereby assessed forum fees in the amount of \$1,000.00 for which NASD Regulation, Inc. shall retain the \$450.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Claimant of \$550.00.
3. NASD Regulation, Inc. shall retain the \$200.00 claim filing fee previously paid by the Claimant.
4. Respondent Shearson, shall pay to NASD Regulation, Inc. the \$350.00 member surcharge pursuant to Rule 10333 of the Code.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John R. Camp, Jr., Esq.

Public/Chairperson

/s/

Michael A. Levin, Esq.

Public/Panelist

/s/

Berthold T. Berkwich

Industry/Panelist

Date of Decision: May 14, 1997