

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Philip E. Lian

96-04723

Name of Respondents

First Asset Management f/k/a Lew Leiberbaum & Co., Inc.
Elliot Gayer
Bernard Golembe
Fred M. Dorushkin

REPRESENTATION

For Claimant Philip E. Lian ("Claimant") appeared Richard I. Wolff, Esq. located in New York, New York.

For Respondents First Asset Management ("First Asset"), Bernard Golembe ("Golembe"), Elliot Gayer ("Gayer"), and Fred M. Dorushkin ("Dorushkin") appeared Isaac Zucker, Esq., located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on October 21, 1996.
Claimant's Submission Agreement was signed on October 18, 1996.

Respondents Joint Statement of Answer was filed on December 13, 1996.
First Asset's Submission Agreement was signed on December 13, 1996.
Dorushkin's Submission Agreement was signed on December 13, 1996.
Golembe's Submission Agreement was signed on December 13, 1996.
Gayer did not file a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	March 7, 1997	-	1 session
Hearing Dates/Sessions:	March 26, 1997	-	1 session
	April 17, 1997	-	2 sessions

July 8, 1997	-	2 sessions
July 9, 1997	-	2 sessions
July 10, 1997	-	2 sessions
September 22, 1997	-	2 sessions
September 23, 1997	-	2 sessions
December 11, 1997	-	2 sessions
February 11, 1998	-	2 sessions
February 18, 1998	-	2 sessions
May 11, 1998	-	2 sessions
May 12, 1998	-	2 sessions
November 9, 1998	-	2 sessions
November 11 1998	-	2 sessions

The pre-hearing conference was conducted by telephone. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that the Respondents committed common law fraud, breach of fiduciary duty, violations of the 1934 Securities Act, breach of contract, unauthorized trading and unsuitable investments in Claimant's accounts. Claimant also alleged that Respondents failed to supervise trading in his account, would not follow up on specific complaints he made and churned his accounts by trading excessively to generate commissions. Claimant maintained that his total loss from First Asset's unlawful conduct was \$217,622.00.

Claimant alleged he received a "cold call" from Dorushkin in March of 1996 to open up a brokerage account at First Asset (known at the time as Lew Leiberbaum & Co., Inc.). Claimant further alleged that Dorushkin falsely informed him that First Asset had an excellent history when in fact First Asset had actually been the subject of several suspensions, fines, censures, and actions instituted by the NASD and numerous regulatory and state authorities.

Claimant alleged that Dorushkin urged him to sell his 5,000 shares of EIS International ("EISI") because of unexpected negative developments, when Dorushkin actually knew that EISI was about to issue a highly favorable report. Claimant maintained that Dorushkin and First Asset were actively buying EISI stock so that they could make substantial profits when First Asset released its highly favorable report on EISI. Claimant further maintained that the price of the stock rose considerably and he suffered losses in the amount of \$67,514.00.

Claimant alleged that Dorushkin and First Asset sold substantial shares of INVN stock without his authorization, which subsequently rose in price and resulted in losses of \$14,614.00.

Claimant alleged that First Asset failed to properly charge him in accordance with the Commission Agreement he entered into with Dorushkin, and that he was overcharged commissions of \$14,709.00 in his individual account and \$7,145.00 in his IRA account. Claimant maintained that from the outset of the relationship he had been constantly pressing Dorushkin to correct the excessive commission charges with no concrete results.

Claimant alleged that he invested heavily in Intelligent Electronics, Inc. ("INEL") based on Dorushkin's strong urgings. Claimant maintained that he conditionally agreed to his last INEL stock purchase of 10,000 shares on June 11, 1996 on the expressed pre-conditions that he would be charged according to the previous Commission Agreement and that the previous commission overcharges would be corrected. Claimant alleged that both pre-conditions were violated, and as a result he wrote to Gayer and Golembe that his 10,000 share INEL purchase was to be cancelled. Claimant maintained that he received no responses to his letters until the following September.

Claimant also maintained that Dorushkin misrepresented INEL's business prospects, and while the stock deteriorated through the summer of 1996, First Asset refused to cancel the transaction. Claimant alleged that because of the unlawful actions taken with the INEL investments, he suffered losses of \$80,001.00.

Claimant also alleged that he suffered losses because Dorushkin made unsuitable high-risk and speculative purchases for his IRA account.

Respondents denied all of Claimant's allegations. Respondents maintained that Claimant was an experienced investor, that he was aware of the risks associated with the investments he was making, and that he approved each of them. Respondents stated that all of the commissions charged were within the legal parameters applicable to them. Claimant stated that when he received confirmations, he complained about the commissions to Dorushkin and Dorushkin advised Claimant that Claimant was correct and that Dorushkin would make the adjustment, but no adjustment was in fact made.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$217,622.00, punitive damages in the amount of \$500,000.00, and reasonable attorney's fees in the amount of \$100,000.00.

Respondents requested dismissal of all claims, and specific dismissal of Gayer and Golembe from the instant claim.

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 remains on file with the NASD.

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. Dorushkin and First Asset are hereby jointly and severally liable and shall pay Claimant the sum of \$34,325.00 plus 9% interest from July 1, 1996 until paid.
2. Dorushkin and First Asset are hereby jointly and severally liable and shall pay Claimant punitive damages of \$35,000.00.
3. Dorushkin and First Asset are hereby jointly and severally liable and shall pay Claimant the sum of \$1,000.00 as reimbursement of the hearing session deposit previously paid to NASD Regulation, Inc.
4. Gayer and Golembe were dismissed based upon their respective Motions to Dismiss.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure of NASD Regulation, First Asset has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

Pre-hearing Conference	-	1 session x \$1000	=	\$ 1,000.00
Hearing Conferences	-	27 sessions x \$1000	=	<u>\$27,000.00</u>
Total Fees	-			\$28,000.00

1. First Asset and Dorushkin are jointly and severally liable for the sum of \$28,000.00, representing the total amount of forum fees assessed. Claimant has previously deposited \$1,000.00 with NASD Regulation, Inc. Therefore, First Asset and Dorushkin shall pay the balance of \$27,000.00 to NASD Regulation, Inc. and shall pay \$1,000.00 to Claimant as provided in the "Award" section above.
2. First Asset is liable and shall pay \$1,000.00 for the postponement of the February 10, 1998 hearing.
3. Claimant is liable and shall pay the sum of \$420.00 for costs associated with this arbitration.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Micalyn S. Harris, Esq. - Public Chairperson
Donald R. Bluth - Public Arbitrator
Peter C. Trent - Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

Micalyn S. Harris, Esq.
Chairperson-Public Arbitrator

Date of decision: January 22, 1999

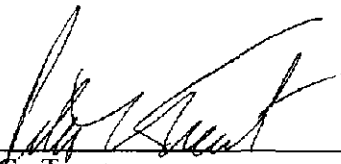
I, **Micalyn S. Harris**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Micalyn S. Harris, Esq.

ARBITRATION PANEL

Micalyn S. Harris - Public Chairperson
Donald R. Bluth - Public Arbitrator
Peter C. Trent - Industry Arbitrator

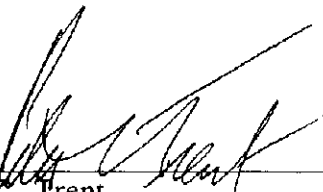
CONCURRING ARBITRATOR'S SIGNATURE



Peter C. Trent
Industry Arbitrator

Date of decision: January 22, 1999

I, **Peter C. Trent**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

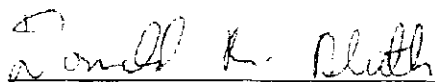


Peter C. Trent

ARBITRATION PANEL

Micalyn S. Harris, Esq. - Public Chairperson
Donald R. Bluth - Public Arbitrator
Peter C. Trent - Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Donald R. Bluth
Public Arbitrator

Date of decision: January 22, 1999

I, **Donald R. Bluth**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Donald R. Bluth