

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Patricia Engel

Case No. 99-02996

Names of Respondents

Lehman Brothers Inc.
Alejandro G. Silva
John Baragwanath

REPRESENTATION OF PARTIES

For Patricia Engel ("Engel"), hereinafter referred to as "Claimant": Clifford J. Bond, Esq. and Sigmund S. Wissner-Gross, Esq., Heller, Horowitz & Feit, P.C., New York, New York.

For Lehman Brothers, Inc. ("Lehman") and Alejandro G. Silva ("Silva"), hereinafter collectively referred to as "Respondents": David G. Russell, Esq., Parker, Hudson, Rainer & Dobbs, LLP, Atlanta, Georgia.

Respondent John Baragwanath ("Baragwanath") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: June 30, 1999.

Claimant signed the Uniform Submission Agreement: June 19, 1999.

Statement of Answer filed by Respondents Lehman and Silva on or about: September 22, 1999.

Respondent Baragwanath did not file a Statement of Answer.

Respondents did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following: In 1996, Claimant opened a margin account with Respondent Lehman for the purpose of investing in the bond market. Respondent Silva was and continues to be the branch manager of Respondent Lehman's office in Santiago, Chile. Respondent Baragwanath was a registered representative with Respondent Lehman and was Claimant's broker at Respondent Lehman. Respondent Lehman required that Claimant maintain margin coverage in her account valued at no less than 25% of the outstanding loan

to Claimant. During the period of 1996 through August 1998, Claimant purchased numerous bonds for her account, often at the recommendation of Respondent Baragwanath. In August 1998, Respondents improperly liquidated Claimant's account, without Claimant's knowledge or consent, to cover a purported margin call of which Claimant was never advised. Subsequently, Respondent Baragwanath admitted to Claimant that the account had been improperly liquidated by Respondent Lehman. The securities which were improperly sold out of Claimant's account were Venezuelan sovereign bonds and Ecuador PDI sovereign bonds. In addition to being improperly liquidated, the liquidation was done at an incorrect exchange rate. Respondents acted wilfully and with reckless disregard for the well-being of Claimant.

Unless specifically admitted in its Answer, Respondents Lehman and Silva denied the allegations made in the Statement of Claim and asserted the following: Claimant's claims concerning margin sales may not be asserted against Respondents because the margin sales were effected by Lehman Brothers Global Finance Ltd. ("LBGF") with whom Claimant contracted for margin loans. To the extent that Claimant implicitly maintains that Respondents Lehman or Silva were agents of LBGF with respect to margin calls, such a relationship could not and did not give Claimant a right to receive margin call notices prior to margin sales if Claimant did not already have that right pursuant to her written agreements with LBGF. Respondents Lehman and Silva maintained that Claimant received notification of margin deficiencies in her account yet failed to act appropriately to cure those deficiencies before LBGF needed to sell the collateral to pay off the margin loan. Respondents Lehman and Silva always acted reasonably, in good faith, and in the best interest of Claimant. It was Claimant's failure to pay down the margin loan, to sell the collateral, or to deposit additional cash or other collateral that caused LBGF to have to effect the margin sales. Respondents Lehman and Silva maintained that Claimant has failed to state and prove a legal claim against Respondents Lehman and Silva upon which relief may be granted. In addition, Claimant's losses, if any, were caused by unforeseen market forces beyond the control of Respondents Lehman or Silva; Claimant authorized the margin sales pursuant to the agreements that Claimant signed with LBGF; Claimant failed to take reasonable steps to mitigate her alleged damages; Claimant's claims are barred by her ratification of the allegedly wrongful conduct; and, Claimant's claims are further barred by the doctrines of estoppel and waiver.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$890,000.00, plus interest thereon, punitive damages of not less than \$500,000.00 and such other and further relief as the panel deemed just and proper.

Respondents Lehman and Silva requested that all claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant advised the arbitration panel, on the record at the commencement of the evidentiary

hearing on October 3, 2000, that she had dismissed, with prejudice, all claims against Respondent Baragwanath.

At the evidentiary hearing on October 3, 2000, Claimant advised the arbitration panel that she was withdrawing her claim regarding improper rate of conversion of foreign currency.

Respondent Lehman and Silva did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

AWARD

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

Respondents' Motion to Dismiss at the conclusion of Claimant's direct case was granted. Therefore, Claimant's claims are denied in their entirety.

The Panel recommends the expungment of all references to the above-captioned arbitration proceeding from Respondent Silva's CRD record with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Silva must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungment directive.

All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

No adjournments were requested during these proceedings.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: April 4, 2000	1 session
Five (5) Hearing sessions x \$1,200.00	= <u>\$6,000.00</u>
Hearing Dates: October 3, 2000	2 sessions
October 4, 2000	2 sessions
October 5, 2000	1 session
Total Forum Fees	= \$7,200.00

The Panel has assessed the total forum fees of \$7,200.00 to Claimant Engel.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= <u>\$7,200.00</u>
Total Fees	= \$7,700.00
<u>Less payments</u>	= <u>\$1,700.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,000.00

Respondent Lehman be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$7,600.00</u>
Total Fees	= \$7,600.00

<u>Less payments</u>	<u>= \$7,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within thirty days of the Award's date of service.

Concurring Arbitrators' Signatures

/s/

Stan West
Public Arbitrator, Presiding Chair

November 14, 2000
Signature Date

/s/

Steven Goerke, Esq.
Public Arbitrator

November 16, 2000
Signature Date

/s/

George D. Lambert, III
Industry Arbitrator

November 15, 2000
Signature Date

November 16, 2000
Date of Service (For NASD-DR office use only)

<u>Less payments</u>	<u>= \$7,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within thirty days of the Award's date of service.

Concurring Arbitrators' Signatures

Stan West
Stan West
Public Arbitrator, Presiding Chair

Nov. 14, 2000
Signature Date

Steven Goerke, Esq.
Public Arbitrator

Signature Date

George D. Lambert, III
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Less payments

= \$7,600.00

Balance Due NASD Dispute Resolution, Inc.

= \$ 0.00

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Concurring Arbitrators' Signatures

Stan West
Public Arbitrator, Presiding Chair

Signature Date


Steven Gordon, Esq.
Public Arbitrator


Signature Date

George D. Lambert, III
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Less payments

Balance Due NASD Dispute Resolution, Inc.

= \$7,600.00

= \$ 0.00

All fees are payable to NASD Dispute Resolution, Inc. and are due within thirty days of the Award's date of service.

Concurring Arbitrators' Signatures

Stan West
Public Arbitrator, Presiding Chair

Signature Date

Steven Goerke, Esq.
Public Arbitrator

Signature Date



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Industry Arbitrator



Signature Date

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