

*U.S. house of Representatives
Committee on Energy and
Commerce
Room 2125, Rayburn house Office Building
Washington, DC 20515*

September 18, 1985

Honorable John S.R. Shad
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Chairman Shad:

This letter is with reference to the enclosed letter of August 30, 1985, and supporting documentation, concerning a complaint against Shearson/Lehman American Express.

The way that this matter has been handled by all parties concerned is a travesty and calls such arbitration proceedings, and Commission oversight of the self-regulatory organizations, into serious question. There has been a marked increase in such complaints received by the Committee.

I would appreciate a full inquiry into this complaint and a response from the Commission by the close of business on Thursday, October 31, 1985.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Enclosures

cc: Joan Hunt Smith

Joan Hunt Smith
1415 Sheridan Road
Wilmette, Illinois 60091
Tel: (312) 328-4386

July 17, 1985

Ms. Linda Schneider
Counsel - Consumer Affairs Specialist
Securities and Exchange Commission
450 Fifth Street, N.W., Room 2133
Washington, DC 20549

Re: C.B.O.E. Arbitration
Joan Hunt Smith - Claimant

Dear Ms. Schneider:

I am writing to you regarding claims aggregating in excess of \$500,000 before a Chicago Board of Options arbitration panel which were recently resolved in favor of Shearson-Lehman American Express and against me as one of the Claimants. The facts outlined below support an investigation by your office of the mismanagement of the accounts by Shearson-Lehman American Express as well as the subsequent arbitration proceeding.

For the sake of clarity I will outline the facts as they apply to (a) the broker, (b) Shearson-Lehman American Express and (c) the Chicago Board of Options' (C.B.O.E.) arbitration.

I. Broker

1. Prepared and submitted to the New York Office fraudulent Financial Statements
2. Churned the accounts entrusted to his management
3. Abused the trust repositied by his clients
4. Misrepresented himself as an options expert
5. Was indicted for, pled guilty to, and was sentenced for Income Tax Evasion
6. Was emotionally unfit to handle client accounts
7. Committed suicide

II. Chicago Manager of Shearson-Lehman American Express

1. Signed and consented to the fraudulent Financial Statements
2. Approved trading in investments unsuitable for the claimants
3. Improperly supervised the broker
4. Had knowledge of and failed to terminate the churning of the accounts

Ms. Linda Schneider

July 17, 1985

Page 2

III. Shearson-Lehman American Express

1. Had knowledge of the use of a false and fraudulent Financial Statement
2. Improperly supervised their employees
3. Approved investments which were unsuitable for investors in the posture of the claimants
4. Their Vice President and General Counsel (Mr. Philip Hoblin, Jr.) was formerly the Chairman of the C.B.O.E. Arbitration Committee
5. Mis-stated to the New York Stock Exchange the facts surrounding the discharge of the broker

IV. C.B.O.E. Arbitration Committee

1. Failed to rule on the evidence before them
2. Improperly accepted jurisdiction of this matter in light of Mr. Hoblin's prior relationship with the C.B.O.E.
3. The Chairman of the panel failed to recuse himself for health reasons
4. The Chairman of the panel (who is also the Chairman of the Arbitration Committee) failed to recuse himself for having served on a C.B.O.E. seven man conduct committee with Philip Hoblin, Jr.
5. Failed to disclose Mr. Hoblin's prior relationship with the C.B.O.E.
6. Failed to operate under the rules of the National Arbitration Association
7. Failed to provide adequate time to hear these matters
8. Provides no procedure to effectively appeal an arbitration award
9. Failed to provide the claimants with a list of arbitrators and their biographies

This list is not exhaustive of all improprieties by the broker, the brokerage house nor-the C.B.O.E. Arbitration Panel. It should be noted that under similar circumstances involving the same broker and the same brokerage house, and during this same time period, a claimant was paid 75 percent of her claim (see Louise Schulman, Claimant, vs. Shearson Loeb Rhoades, Inc., Respondent, National Association of Securities Dealers Arbitration No. 82-66).

I believe the time is ripe for your office to investigate these improprieties which potentially harm all investors. There is no justification for this travesty to occur and the complete lack of investor protection must not be condoned. I would appreciate your advising me of the name of the person to contact to submit the supporting documents and to discuss this matter in further detail. The damages inflicted against us have been severe, and I will assist your investigation in any way possible.

Ms. Linda Schneider
July 17, 1985
Page 3

I await your response.

Sincerely,

Joan Hunt Smith

The attached transcript will give you some idea of the problems we have encountered with our attorneys. The record will show that from the moment we met Mr. Crotty, our second attorney, it was his responsibility to inform Judge Grady that we needed a stay in our RICO case which was filed just after the arbitration and before we heard of the "no award." He even thought he might be able to get it consolidated with our struggle in front of Judge Plunkett to not have the award made into a judgement, which Shearson was requesting. He did not want to try the RICO case as he does not do trial work and it was a contingency case. I received several different versions of what happened to the stay from the attorney's office, so I finally contacted the judge's court reporter and found out the truth, but not until after the appeal time had run.

Mr. Crotty also filed a motion in front of Judge Plunkett to get the Arbitration transcript sent to the U.S. Court of Appeals. I was going to try to write the brief myself, due to lack of funds and the dismal outlook in the 7th Circuit for setting arbitration awards aside. This motion was filed after I got permission to be pro se. Judge Plunkett then called the attorneys and asked to see them on this matter as the transcript had not been presented to him, but only referred to in the briefs. Judge Plunkett took his vacation and the attorney's office wrote me that they would contact the Judge on August 26th and schedule an appearance in court on the matter. I called the Judge's clerk on August 30th and found that the attorneys had called and withdrawn their motion saying I was pro se and they no longer represented me. I believed their letter to me and thought by the 30th the hearing would have been held. I do not know why the transcript was not presented with the brief.

Our first attorneys would not move at all after they received the arbitration result. They filed the RICO case before learning the arbitration finding to protect the rights of George Hybert as the statute was about to run on his churning. The the RICO case was not served until the court ordered them to do so. They told me at 4:50 on Friday afternoon to "find a new attorney over the weekend." We were under attack by Shearson on the motion for judgement.

I would also like for you to know that yesterday I was told by a friend that Charles Cox, arbitration panel member and C.B.O.E. trader, does business with Shearson (among others) either in his name or through CBC Corp., which he controls. (Mr. Cox uses Brandt Clearing House.) If this is true (being a clear violation of the Arbitration Act), it could provide a reason for setting aside the arbitration award and reopening the RICO case. Mr. William Carroll, arbitration panel chairman and committee chairman, General Partner in Fahnstock and Company, and options floor trader for Chicago Corporation, may also possibly conduct business with Shearson. A third member of our panel, Ann Schiave, is an attorney with McBride and Baker. Just as we were beginning the arbitration, she told us she has arbitrated for the C.B.O.E. for years and does securities work. I did not realize the import of her words at that time in that the nature of her work tipped the scales in favor of the securities industry.

Could the SEC possibly give me a hand in verifying the possible business association with Shearson of the two floor traders mentioned above.? I am crippled financially due to Shearson's actions and the fundamental unfairness of the arbitration, and feel the SEC should have investigated this matter in depth long ago. Publications such as Barrons and Forbes have been highly critical of the SEC from time to time, saying they very often do too little too late. To date I would tend to agree with them.

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGE HYBERT, JOAN SMITH,) Docket No. 84 C 10327
as trustee of the Mary Duke)
Smith Trust,)
)
Plaintiffs,)
)
vs.)
)
SHEARSON, LEHMAN/AMERICAN)
EXPRESS, INC., and) Chicago, Illinois
WILLIAM COHEN,) Wednesday, June 26, 1985
) 10:00 o'clock a.m.
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN F. GRADY, JUDGE

APPEARANCES:

For the Plaintiffs: RIECK & CROTTY, P.C.,
BY: MR. JEROME F. CROTTY
(55 West Monroe – Suite 3660
Chicago, Illinois 60603)

For the Defendant THOMAS M. KNEPPER, LTD.,
Shearson, Lehman/ BY: MR. MARGHERITA M. ALBARELLO
American Express: (55 West Monroe – Suite 3700
Chicago, Illinois 60603)

Court Reporter: MS. LAURA M. BRENNAN
(219 South Dearborn Street
Suite 1918
Chicago, Illinois 60604)
312/427-4393

1 THE CLERK: 84 C 10327, Hybert versus Shearson Lehman.
2 Defendants' motion to request ruling on papers before the Court.

3 MR. CROTTY: Good morning, your Honor. Jerome Crotty on behalf of
4 the plaintiffs.

5 THE COURT: Good morning.

6 MS. ALBARELLO: Good morning, your Honor.
7 Margherita Albarello on behalf of the defendant Shearson-American Express.

8 THE COURT: Good morning.

9 MS. ALBARELLO: Your Honor, this is our motion for the Court to rule
10 on the pleadings before the Court.

11 If I may give a brief description of what has occurred in this action,
12 back in November of 1984 a complaint was filed and it was -- had a RICO -- styled as a
13 RICO claim. For reasons unknown, plaintiffs never attempted to serve process on
14 Shearson until this Court entered an order directing them to.

15 The next time that -- Shearson properly answered that complaint,
16 and the next time we were before this Court was on April 10th on prior counsel's motion
17 to withdraw. At that time, your Honor, you entered an order allowing them to withdraw,
18 and Mr. Crotty's firm stepped in. Since that time nothing at all has been done on this
19 complaint with the exception that Shearson, pursuant to your order, has filed its motion
20 for summary judgment and memorandum in support thereof.

21 We feel that as Mr. Crotty has missed the June 10th date and they
22 have done nothing on this matter at all, that you should rule on the pleadings before you.

23 THE COURT: Mr. Crotty?

1 MR. CROTTY: Your Honor, what counsel has stated is correct.
2 However, additionally, there is another proceeding pending that was pending before
3 Judge Plunkett that is now up in the Circuit Court of Appeals (sic). That matter related to
4 the confirmation of the award that was rendered in favor of Shearson in the arbitration
5 proceedings.

6 We have taken that appeal for the purpose of setting aside the
7 summary judgment ordered by Judge Plunkett.

8 In this case we had filed an appearance as an accommodation to
9 the client because of her prior attorney's withdrawal. In the meantime the client is
10 shopping for additional counsel to assist her in this claim and also assist him in this
11 claim, and had directed us to not take any further action on it until she had the
12 opportunity to secure other counsel.

13 I realize, Judge, that there was a briefing schedule set which
14 required the filing of a response to this motion by June 10th, but -- and that we have not
15 complied with that schedule. But we respectfully request that the Court allow our client
16 to have some additional time to get additional counsel in this case.

17 THE COURT: Well, did you file an appearance in this case, Mr. Crotty,
18 with the --

19 MR. CROTTY: Yes, we did.

20 THE COURT: -- with the intention of doing nothing?

21 MR. CROTTY: No, no, your Honor.

22 THE COURT: It sounds like that is what you are saying.

23 MR. CROTTY: No. We did not intend to do that.

1 The client, however, asked us to render an opinion with respect to
2 the case, and we have done so. That opinion has --

3 THE COURT: Well, when you were in court and you were told to file a
4 paper by the 10th of June, was it your intention to file it?

5 MR. CROTTY: Yes, it was.

6 THE COURT: Why didn't you do it?

7 MR. CROTTY: In the meantime we have been directed by the client not
8 to file a response and not to take further action with respect to the case, but to try to get
9 them time within which to secure other counsel.

10 MS. ALBARELLO: Your Honor, if I may respond to that?

11 THE COURT: Yes.

12 MS. ALBARELLO: When we were before you on April 10th we
13 objected to the motion to withdraw as counsel, and that is because our client is prejudiced
14 by the drawing out of this claim.

15 THE COURT: Is the subject matter of the case that is on appeal the same
16 as the subject matter here?

17 MS. ALBARELLO: Your Honor, our petition for -- or the appeal of
18 Judge Plunkett's confirmation of the arbitration board -- the very same facts which were
19 before the Chicago Board of Options Exchange in arbitration are the very same facts
20 which are before the Seventh Circuit now, okay? And they are the very same facts which
21 are before you, in the RICO complaint filed with you. We have the same parties, we
22 have the same time frame, we have the same allegation of damages, the same facts.
23 Everything is the same. And the --

1 THE COURT: Is that true, Mr. Crotty?

2 MR. CROTTY: Your Honor, that is true up to a certain point, and the
3 differential in the facts is -- or arises from the fact that this is a RICO count, which is a
4 separate cause of action, wholly separate from that complaint which was heard by the
5 panel of arbitrators.

6 And while the facts presented to the panel of arbitrators were
7 relative to the underlying relationship between the plaintiffs and the defendants, the
8 issues as to whether the facts operate to give rise to a cause of action under the RICO Act
9 is materially different.

10 We think that if the client has the opportunity to present the same
11 facts and additional facts to the Court as opposed to the panel of arbitrators, which we
12 argued in the Plunkett proceedings was tainted --

13 THE COURT: Why wasn't the RICO count filed as a counterclaim in the
14 case before Judge Plunkett?

15 MR. CROTTY: The --

16 THE COURT: I assume that Shearson brought the case before Judge
17 Plunkett.

18 MS. ALBARELLO: Yes, sir.

19 MR. CROTTY: This case, your Honor, was pending prior to the Plunkett
20 case being brought by Shearson. It was filed by our predecessor counsel.

21 THE COURT: I see.

1 MR. CROTTY: And apparently notice of it was not given to Shearson.
2 When we first stepped into the case, we advised Shearson's attorneys immediately that
3 this case was pending. To their shock and surprise, they took action right away.

4 THE COURT: It sounds to me, Mr. Crotty, like this case has not been
5 prosecuted by the plaintiff in the manner that is required by the rules. First, as you have
6 just pointed out, previous counsel did not even bother to see that summons was served
7 until ordered to do so by the Court. And you have intentionally failed to comply with an
8 order of the Court which required the filing of a memorandum by a particular date.

9 The proper way to have proceeded would have been to come in
10 before the 10th of June and ask for an extension of time. Maybe I would have granted it,
11 maybe I wouldn't have. But simply to let the time go by and then not even do anything
12 except to respond to the motion made by the defendant here this morning, is not a lawyer-
13 like way for you to act. And if you are doing it pursuant to your client's instructions, it is
14 clear that your client is not serious about this lawsuit.

15 Accordingly, this case is dismissed for want of prosecution.

16 MS. ALBARELLO: Thank you, your Honor.

17 MR. CROTTY: Thank you, Judge.

18 (Which were all of the proceedings had at the hearing of the within cause on the
19 day and date hereof.)
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