

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

BioPharma Capital Limited and Modern Medicine Fund, (Claimants) vs. Lehman Brothers Inc.,  
Lehman Brothers International (Europe), and Lehman Brothers Holding Inc., (Respondents)

Case Number: 01-02555

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, BioPharma Capital Limited ("BioPharma") and Modern Medicine Fund ("Modern"), hereinafter collectively referred to as "Claimants": Arthur E. Cutler, BioPharma Capital Limited, Worcester, MA.

Respondents, Lehman Brothers Inc. ("Lehman"), Lehman Brothers International (Europe) ("Lehman International"), and Lehman Brothers Holding Inc. ("Lehman Holding"), hereinafter collectively referred to as "Respondents": George O. Richardson, Esq., Sullivan & Worcester LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 14, 2001.

BioPharma signed the Uniform Submission Agreement: May 11, 2001.

Modern signed the Uniform Submission Agreement: May 11, 2001.

Joint Statement of Answer filed by Respondents on or about: September 11, 2001.

Lehman did not sign a Uniform Submission Agreement.

Lehman International did not sign a Uniform Submission Agreement.

Lehman Holding did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: refusal to honor a soft dollar contract; failure to pay validly presented invoices; willful and malicious refusal to honor the Prime Broker Agreement between the parties; and failure to execute transactions. Claimants' claim involved unspecified financial products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the dispute in question is not subject to the jurisdiction of NASD Dispute Resolution; Claimant's claims are not supportable in law or fact; Lehman International had the right to terminate the Prime Brokerage Agreement, and did terminate said agreement in accordance with the provisions thereof; Lehman International terminated its relationship with Claimants after the Claimants refused to accept responsibility for two trades which Claimants ordered, but which lost value after execution; Respondents are in no way responsible for Claimants' alleged inability to execute trades after the termination of the Prime Brokerage Agreement; and Lehman International fulfilled all obligations owing to Claimants pursuant to the Prime Brokerage Agreement.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$600,000.00, plus punitive damages in the amount of \$900,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents made a Motion to Dismiss this arbitration on the basis of lack of jurisdiction. After due consideration, the Panel denied Respondents' Motion.

Lehman, Lehman International, and Lehman Holding did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety, with prejudice.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$ 500.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, Lehman Brothers Inc. is a party.

Member surcharge = \$2,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$4,500.00

#### **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: May 9, 2002 1 session

Four (4) Hearing sessions x \$1,200.00 = \$4,800.00

Hearing Dates: September 17, 2002 2 sessions

September 18, 2002 2 sessions

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Total Forum Fees = \$6,000.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Total Fees = \$ 500.00

Less payments = \$1,700.00

Refund Due Claimants = \$1,200.00

2. Lehman is solely liable for:

<u>Member Fees</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$7,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$6,000.00
<u>Total Fees</u>	= \$6,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,000.00

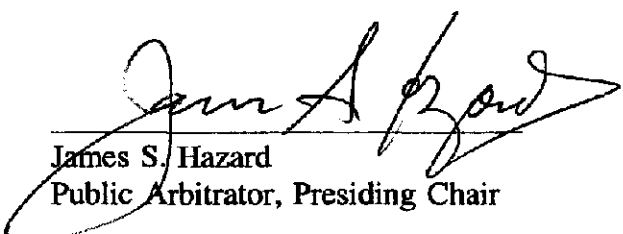
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

✓ James S. Hazard	-	Public Arbitrator, Presiding Chair
Allen Kilik, Esq.	-	Public Arbitrator
Barbara E. Fernandez	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, 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.

  
\_\_\_\_\_  
James S. Hazard  
Public Arbitrator, Presiding Chair

10/11/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Allen Kilik, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Barbara E. Fernandez  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

October 25, 2002  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chair

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Signature Date

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Allen Kilik, Esq.  
Public Arbitrator

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Signature Date

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Barbara E. Fernandez  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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*Allen Kilik*

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Allen Kilik, Esq.  
Public Arbitrator

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Signature Date

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Barbara E. Fernandez  
Non-Public Arbitrator

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Signature Date

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October 25, 2002

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