

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
S & R Partnership

Case Number: 02-07189

Name of the Respondents  
Lehman Brothers, Inc.; and  
Karen Post Ford

Hearing Site: Dallas, Texas

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimant S & R Partnership, hereinafter referred to as "Claimant": H. Allan Pennington, Jr., Esq. of the firm of Pennington Baker, located in Fort Worth, Texas.

Respondents Lehman Brothers, Inc. ("Lehman") and Karen Post Ford ("Ford"), hereinafter collectively referred to as "Respondents": Jack D. Ballard, Esq. of The Ballard Law Firm, located in Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed: November 26, 2002.

Claimant signed the Uniform Submission Agreement: February 8, 2003.

Amended Statement of Claim filed: September 26, 2003.

Statement of Answer filed by Respondents: May 2, 2003.

Respondent Lehman signed the Uniform Submission Agreement: May 2, 2003.

Respondent Ford signed the Uniform Submission Agreement: May 2, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of fiduciary duty; violation of Section 27.01 of the Texas Business and Commerce Code; violation of the Texas Securities Act; and common law fraud. These causes of action resulted from the purchase of 500 shares of IMCL stock and the simultaneous sale of four covered calls of the same stock. When Claimant was advised that the transactions could not be completed because of the absence of the proper account documents and received confirmation of the same, Claimant took no further action in regard to the stock. After these actions occurred, a tender offer was made for the stock which

Claimant could have taken advantage of for a substantial profit. Claimant alleged that he did not receive a monthly statement for several months, but noticed that the transactions had been completed upon receiving his first monthly statement after the attempted transaction. As a result, Claimant alleged damages for Respondents providing the incorrect information.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim, and each claim therein, fails to state a claim upon which relief can be granted;
2. Claimant had or should have had full knowledge of all material facts concerning the investments he made, including the nature of those investments, as well as the associated risks. Claimant is now estopped from bringing this action and from obtaining recovery;
3. Claimant directed and/or authorized the execution of all transactions in his account and is therefore estopped from bringing this action;
4. Claimant knew or was on notice of the transactions in his account and did nothing; he thus ratified the transactions and his claims are barred by the equitable principles of waiver, estoppel and ratification;
5. Respondents did not make any misrepresentations, omissions or misstatements with respect to the investments made in Claimant's account;
6. Claimant's claims are barred because any alleged misrepresentations were expressions of opinion, not fact, and as such are not actionable;
7. Claimant's claims are barred because any alleged misrepresentation was not material;
8. To the extent any losses or diminution in the value of Claimant's account has occurred, such losses were within the risk Claimant assumed and were caused, in whole or in part, by unforeseen market conditions beyond Respondents' control;
9. Under applicable law, no fiduciary relationship existed between the parties and therefore no breach of fiduciary duty may be found;
10. To the extent Claimant is attempting to set forth a claim for fraud, the Statement of Claim fails to plead with particularity and fails to set forth specific facts underlying the elements of such an action;
11. Respondents are not liable to Claimant in any amount because, at all times relevant herein, they acted properly and in good faith;
12. Claimant's alleged losses were proximately caused by his own conduct, negligence or contributory negligence in relation to the transactions complained of by him and thus preclude him from any recovery;
13. Claimant failed to mitigate his damages;
14. Claimant's claims are barred, in whole or in part, by the doctrine of laches; and,
15. The allegations relating to punitive damages are merely conclusory and fail to set forth the necessary facts in order to recover such damages.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$19,590.77-\$27,090.77
Punitive Damages	As determined by the Panel
Interest	Pre-judgment interest has defined by Texas statute
Attorneys' Fees	Pursuant to the Texas Securities Act
Other Costs	As determined by the Panel

The Amended Statement of Claim revised the claim for Compensatory Damages to between \$6,371.77 and \$28,371.77. At hearing, Claimant clarified that the attorney fee request was \$6,000.00, and that an additional \$3,500.00 would be required if the award was challenged in court.

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

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

On September 26, 2003, Claimant moved to amend its claim to conform the claims to the current market price of the stock and to clarify the claims. After consideration of the Motion and objections, the Arbitrator granted the Motion. Respondent cited Thomas v. Prudential as precedent. The Arbitrator requested and reviewed a copy of the award.

On October 23, 2003, Claimant submitted a post-hearing brief. Respondent objected to the filing of the brief. After consideration of the written arguments presented by counsel, the Arbitrator denied the submission of the post-hearing brief.

#### **AWARD**

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

1. The claims asserted by Claimant S & R Partnership are dismissed and denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Karen Post Ford's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Karen Post Ford must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is 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 = \$ 150.00

**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. Accordingly, Respondent Lehman Brothers, Inc. is a party and the following member fees are assessed:

Member surcharge = \$ 600.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 1,000.00  
Total Member Fees = \$ 2,350.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

**Forum Fees and Assessments**

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

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00  
Pre-hearing conferences: July 25, 2003 1 session  
October 1, 2003 1 session  
Two (2) Hearing sessions @ \$450.00 = \$ 900.00  
Hearing Date: October 7, 2003 2 sessions  
Total Forum Fees = \$ 1,800.00

The Arbitrator has assessed \$1,800.00 of the forum fees to Claimant S & R Partnership.

**EEE SUMMARY**

Claimant S & R Partnership is solely liable for:

Initial Filing Fee = \$ 150.00  
Forum Fees = \$ 1,800.00  
Total Fees = \$ 1,950.00  
Less payments = \$ 625.00

NASD Dispute Resolution  
Arbitration No. 02-07189  
Award Page 5

Balance Due NASD Dispute Resolution - \$ 1,325.00

Respondent Lehman Brothers, Inc. is solely liable for:

Member Fees	= \$ 2,350.00
Less payments	= \$ 2,350.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Tina E. Patterson - Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

Tina E. Patterson

Tina E. Patterson  
Public Arbitrator, Presiding Chairperson

December 17 2003

Signature Date

12/19/03 Ulu

Date of Service (For NASD Dispute Resolution office use only)