

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

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In the Matter of the Arbitration Between:

Melinda Trocano and Robert Semenak (Claimants) v. Lehman Brothers, Inc. (Respondent)

Case Number: 02-07826

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Associated Persons vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Melinda Trocano ("Trocano") and Robert Semenak ("Semenak") hereinafter collectively referred to as "Claimants": Bruce B. Elfvin, Esq., Elfvin & Besser, Cleveland, OH.

Respondent Lehman Brothers, Inc. ("Lehman") hereinafter referred to as "Respondent": Christopher M. Burky, Esq., Neal, Gerber & Eisenberg, Chicago, IL.

**CASE INFORMATION**

Statement of Claim filed on or about: December 23, 2002.

Claimant s signed the Uniform Submission Agreement.

Statement of Answer filed by Respondent on or about: March 28, 2003.

Respondent signed the Uniform Submission Agreement: March 28, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to pay owed compensation; and inaccurate statements made on Form U-5s.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested severance benefits in the amount of \$75,192.00 for Semenak and \$30,315.00 for Trocano; lost earnings in the amount of \$45,769.00 for Semenak and \$32,842.00 for Trocano; front pay in the amount of \$170,000.00 for Semenak and \$112,600.00 for Trocano; four weeks unused vacation in the amount of \$6,538.48 for Semenak and \$4,331.00 for Trocano; Cobra dental benefits in the amount of \$170.00 and Cobra medical benefits in the amount of \$2,441.00 for Semenak; restricted stock units in the amount of \$12,840.00 for Semenak; legal fees from other securities industry investigations in the amount of \$38,563.00 for Semenak and

\$15,558.00 for Trocano; order that the information contained on Claimants' U-5s be altered to show no violation; costs, including attorneys' fees; and any other relief that is deemed to be just and proper.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety; costs, including reasonable attorneys' fees; and such other relief as the Panel deems just and equitable.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, and 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. The claims of Trocano and Semenak for severance benefits are denied.
2. The claims of Trocano and Semenak for lost earnings are denied.
3. The claims of Trocano and Semenak for two years front pay are denied.
4. Respondent is liable for and shall pay to Claimant Trocano the value of unused vacation pay in the amount of \$4,331.00.
5. Respondent is liable for and shall pay to Claimant Semenak the value of unused vacation pay in the amount of \$6,538.48.
6. The claims of Trocano and Semenak for Cobra dental and medical benefits are denied.
7. Respondent is liable for and shall pay to Claimant the value of restricted stock units in the amount of \$12,840.00.
8. The claims of Trocano and Semenak for reimbursement of legal fees from other securities industry investigations are denied.
9. The claims of Trocano and Semenak for an order to change the Form U-5s are denied.
10. Any and all relief not specifically addressed herein 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 = \$375.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, Lehman Brothers, Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 8-9, 2004, adjournment by Claimant	= Waived
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**Forum Fees and Assessments**

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

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$3,600.00
Pre-hearing conferences:	
July 14, 2003	1 session
August 15, 2003	1 session
April 22, 2004	1 session
Five (5) Hearing sessions @ \$1,200.00	= \$6,000.00
Hearing Dates:	
October 7, 2004	2 sessions
October 8, 2004	3 sessions
Total Forum Fees	= \$9,600.00

1. The Panel has assessed \$4,800.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$4,800.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$ 5,175.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

2. Respondent is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$11,800.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

**ARBITRATION PANEL**

Michael L. King, J.D.	-	Public Arbitrator, Presiding Chairperson
Harlita H. Robinson, CPA	-	Public Arbitrator
Robert V. Shepard	-	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.

\_\_\_\_\_  
Michael L. King, J.D.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Harlita H. Robinson, CPA  
Public Arbitrator

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

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Robert V. Shepard  
Non-Public Arbitrator

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

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Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
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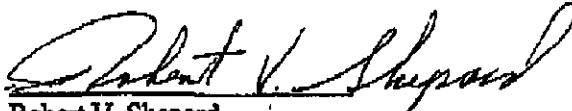
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October 28, 2004

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ARBITRATION PANEL

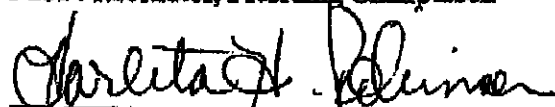
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10/28/04  
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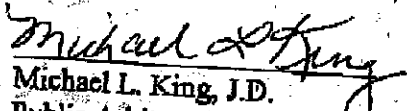
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