

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

JO PARASILITE

Claimant

and

SHEARSON LEHMAN BROTHERS, INC. AND  
NICK DIMINICO

Respondents

CASE NO. 88-02393

CASE SUMMARY

In a Statement of Claim filed with the NASD on July 28, 1988, Claimant Jo Parasilite ("Parasilite") alleged that Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Nick Diminico ("Diminico") engaged in the following misconduct in the trade of zero coupon bonds and common stock;

- (1) Churning the margin account;
- (2) Engaging in unsuitable and unauthorized stock transactions inconsistent with Claimants' investment goals;
- (3) Engaged in misrepresentation by supplying claimant with account summaries prepared by Respondent Diminico which included inaccurate information and telling claimant to disregard Shearson's statements; and,
- (4) Respondent Shearson failed to adequately supervise Respondent Diminico.

In a Statement of Answer filed with the NASD on November 23, 1988, Respondents Shearson and Diminico deny the allegations of his misconduct in the Statement of Claim and state affirmatively that:

- (1) Parasilite represented herself as a knowledgeable investor;
- (2) All trades taken together produced a profit;
- (3) commissions were only paid on one trade in regular account of claimant;
- (4) all trades were unauthorized;
- (5) the Diminico prepared statements were to complement the Shearson statements;

(6) The statement of claim fails to state a claim upon which relief can be granted; and,

(7) the claims are barred by doctrines of affirmance, assumption of risk, estoppel, ratification and waiver.

#### RELIEF REQUESTED

Claimant requested in here Statement of Claim that an award be entered in her favor for the commissions and interest wrongly obtained by Diminico and Shearson (the amount to be determined in arbitration); the loss of \$6,935.33 on an unauthorized purchase of common stock; the opportunity costs in excess of \$18,000 that would have been received had the unauthorized purchase not been made; and, attorneys' fees, accountants' fees, costs and interest.

Respondents request an award be entered dismissing the Statement of Claim and a recovery of costs in this matter.

#### PROCEDURAL MATTERS

In her Statement of Claim, Parasilite moved to consolidate this matter with NASD Arbitration No. 88-02391, Anne Thomas v. Shearson Lehman Brothers, Inc. and Nick Diminico. The Respondents opposed this motion. The Director of Arbitration denied the motion on December 20, 1988 and Claimants were instructed they could raise this motion with the panel of arbitrators for final determination. The motion for consolidation was not raised by claimant before the panel of arbitrators.

In a motion filed with the NASD on May 21, 1990 and presented to the panel at the hearing, Claimant moved to Amend her Statement of Claim to request the recovery of the sum of \$250,000.00 in punitive damages from the respondents. After hearing the presentation of all parties, the panel of arbitrators went into an executive session and granted claimants' motion to amend to include punitive damages.

#### AWARD

On May 24, 1990 and May 28, 1990, in Houston, Texas during a hearing lasting 3 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 22, 1988 by Claimant Jo Parasilite, on January 16, 1989 by Mark Stevenson on behalf of Respondent Shearson Lehman Hutton, Inc. and on December 30, 1988 by Respondent Nick Diminico.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;

2. The parties shall each bear their own respective costs including attorneys' fees; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$200.00 filing fee previously deposited with the NASD by the Claimant Jo Parasilite.

By the Panel

Dated: 16 July 1990 /S/

A. Bentley Nettles  
Bentley Nettles, Esq.  
Presiding Chair

Dated: \_\_\_\_\_ /S/

William F. Schneider, Esq.

Dated: \_\_\_\_\_ /S/

Robert H. Baker, Sr.

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By the Panel

Dated: \_\_\_\_\_

/S/

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Bentley Nettles, Esq.  
Presiding Chair

Dated: 8/3/90

/S/

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*William F. Schneider*  
William F. Schneider, Esq.

Dated: \_\_\_\_\_

/S/

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Robert H. Baker, Sr.

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By the Panel

Dated: \_\_\_\_\_

/S/

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Bentley Nettles, Esq.  
Presiding Chair

Dated: \_\_\_\_\_

/S/

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William A. Schneider, Esq.

Dated: 7/26/90

/S/

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Robert H. Baker, Sr.