

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Roxann Haupt

89-03011

Name of Respondent(s)

Shearson Lehman Brothers, a/k/a  
Shearson American Express

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Heard before:

Name	Public/Industry
Philip Marshall, Esq. (chairperson)	Public Arbitrator
Margery Gootnick, Esq.	Public Arbitrator
Joseph Gentile	Industry Arbitrator

REPRESENTATION

Claimant Roxann Haupt was represented by Eugene Pigott, Jr., Esq. of Offermann, Mahoney, Cassano, Pigott, Greco Palmer & Whalen in Buffalo, New York.

Respondent Shearson Lehman Brothers was represented by Jeffrey Sellers, Esq. of Silverberg Yood Sellers & McGorry in Buffalo, New York.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 26, 1989. Claimant alleged that, after advising the Respondent that she wished to invest in stable, income-producing securities, Respondent fraudulently transferred the Claimant's securities into a margin account, purchasing and selling volatile, speculative securities as well as churning the account. Respondent maintained that the Claimant authorized beforehand every transaction that took place in her account, received monthly statements, trade confirmation tickets as well as a phone call from her Shearson broker to discuss all trades. Respondent also maintained that the commissions generated and the turnover in the Claimant's account was reasonable and appropriate given the Claimant's investment strategy.

### RELIEF REQUESTED

Claimant requested compensatory damages of \$132,160.82 plus interest, attorneys fees and costs. Respondent requested that the claims of the Claimant be dismissed and any costs be assessed against the Claimant.

### AWARD

On April 23, 1991 in Buffalo, New York during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Roxann Haupt on June 15, 1989 and not signed by Respondent Shearson Lehman Brothers, Inc. as required by Sections 12 and 25 of the Code of Arbitration Procedure (Code). The arbitrators find that they have jurisdiction over the Respondent in this matter pursuant to Sections 1, 12 and 25 of the Code.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of all issues submitted for determination as follows:

- (1) The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
- (2) Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to the Claimant Roxann Haupt the sum of Eighteen Thousand Eight Hundred Twelve Dollars and No Cents (\$18,812.00) plus interest at the statutory rate under New York law from October 15, 1985 through the date of payment of this award.
- (3) The parties shall each bear their respective costs, including attorneys fees.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

- (1) The NASD, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant.

Concurring Arbitrator(s) Signature

  
Philip Marshall, Esq.

Margery Gootnick  
Margery Gootnick, Esq.

Joseph Gentile

Dated: 5/15/91

Margery Gootnick, Esq.

  
Joseph Centile

Dated: