

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Theodore and Bella Ruderman

90-01459

Name of Respondents

Shearson Lehman Hutton, Inc. (n.k.a.  
Shearson Lehman Brothers, Inc.) and  
Lou Provenzano

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REPRESENTATION

For Claimant: Richard Slavin, Esq. of Cohen and Wolf, P.C.

For Respondent: William Hohauser, Associate General Counsel, Shearson  
Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed: May 23, 1990.

Claimants' Submission Agreement signed on: May 15, 1990.

Joint Statement of Answer filed by Respondent, Shearson Lehman Hutton, Inc.  
and Louis Provenzano on August 3, 1990.

Respondent, Shearson Lehman Hutton, Inc.'s Submission Agreement signed on:  
August 1, 1990.

Louis Provenzano did not execute a Submission Agreement, however, he was  
represented by counsel and all answers, motions and briefs were filed on his  
behalf. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the  
Arbitration Panel exercised its jurisdiction over Mr. Provenzano.

HEARING INFORMATION

Hearing Dates/Sessions: December 5, 1990 - 1 session  
January 30, 1991 - 2 sessions  
January 31, 1991 - 2 sessions  
February 1, 1991 - 2 sessions  
June 3, 1991 - 2 sessions  
July 15, 1991 - 2 sessions  
July 16, 1991 - 2 sessions  
July 17, 1991 - 2 sessions  
August 5, 1991 - 2 sessions

August 6, 1991 - 2 sessions  
August 7, 1991 - 2 sessions

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TOTAL 21 Hearing Sessions

Hearing Location: New York City

#### CASE SUMMARY

Claimants, Theodore and Bella Ruderman ("Claimants") alleged that Respondents Shearson Lehman Hutton, Inc. ("Shearson") and Louis Provenzano ("Provenzano" or collectively referred to as "Respondents") mishandled Claimants' accounts. Claimants alleged that Provenzano failed to follow their stated investment objective and that he recommended a number of purchases and sales which were unsuitable for Claimants' accounts. Claimants alleged that Provenzano churned their accounts. Claimants alleged that Provenzano made material misrepresentation and failed to disclose material information. Claimants alleged that in regard to Intel warrants, that Provenzano failed to carry out instructions given by Claimant Theodore Ruderman. Claimants alleged that Shearson failed to adequately supervise both its agent, Provenzano, and their accounts. Claimants alleged that Shearson failed to follow its own procedure and policies.

Respondents denied each and every allegation asserted by the Claimants and maintained that each transaction was suitable for Claimants and that each transaction was executed with Claimants expressed approval. Respondents maintained that Claimants' churning claim is without support. Respondents maintained that Provenzano followed all instructions he received from the Claimants. Respondents maintained that both the Claimants' accounts and Provenzano were properly supervised. Respondents maintained that Mr. Ruderman was a sophisticated, aggressive investor who fully understood and accepted the risks of trades made in Claimants' accounts. Respondents maintained that all investments were suitable for the Claimants. Respondents maintained that Provenzano kept the Claimants fully informed regarding the status of their accounts and disclosed all material facts and that Provenzano did not make any misrepresentations to the Claimants. Shearson maintained that it followed its procedure and policies in the handling of Claimants' accounts.

#### RELIEF REQUESTED

Claimants requested compensation for the amount of their losses in the amount of \$540,000; compensation for the Respondents commissions in the amount of \$375,000; interest at 8% for three years and attorneys fees and disbursements in this matter approximately \$70,000.00.

Respondents requested that Claimants' claim be dismissed in its entirety, and that Respondents be awarded their costs, including attorneys' fees.

AWARD

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. :

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

1. On the claim of unsuitability, the Panel finds in favor of the Respondents.
2. On the claim of failure to follow instructions with respect to the purchase and sale of the Intel warrants, the Panel finds in favor of the Claimants and award Claimants the difference between the price of all Intel warrants purchased or settled (to wit, 20,000 warrants) after June 30, 1988 and the price of which they were ultimately sold which results in a figure of \$11,250.00 so that the Respondents are jointly and severally liable and shall pay to the Claimants the amount of Eleven Thousand Two Hundred Fifty and 00/100 Dollars (\$11,250.00); not interest is awarded on this amount.
3. On the claim of churning, the panel finds in favor of the Claimants so that the Respondents are jointly and severally liable to the Claimants and shall pay to the Claimants the sum of One Hundred Sixty Two Thousand Three Hundred Sixty Eight and 05/100 Dollars (\$162,368.05); no interest is awarded on this amount.
4. On the claim of failure to supervise, the Panel finds in favor of the Claimants and therefore awards joint and several liability for the damages awarded herein.
5. All other claims, including claims for attorneys' fees and costs, are denied.

FORUM FEES

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

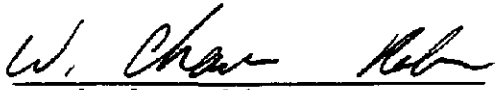
That forum fees are equally assessed against the Claimants and the Respondents, so that Claimants' are assessed forum fees in the amount of \$10,500.00. Claimants' are entitled to offset this amount with their filing fee of \$1,000.00 so that the amount due from the Claimants' is \$9,500.00.

Respondents are jointly and severally assessed forum fees in the amount of \$10,500.00.

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature:


  
\_\_\_\_\_  
W. Charles Robinson, Esq.  
Public Arbitrator/Chairman

DATED: October 30, 1991

STATE OF: New York  
COUNTY OF: New York

S.S.:

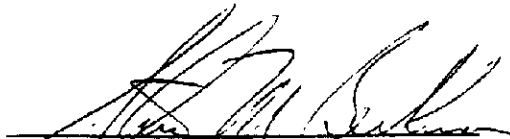
On this 22ND day of OCTOBER, 1991, before me personally appeared W. Charles Robinson known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
W. JAMES NOLAND  
Notary Public, State of New York  
No. 41-4752702  
Qualified in Orleans County  
Commission Expires March 30, 1992

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature:

A handwritten signature in dark ink, appearing to read "Stuart Berkman", written over a horizontal line.

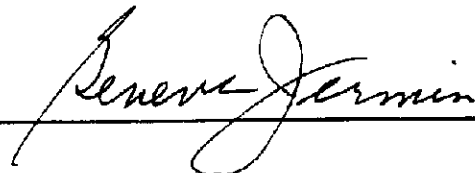
Stuart Berkman, Esq.  
Public Arbitrator

DATED: October 30, 1991

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this *15<sup>th</sup>* day of *October*, 1991, before me personally appeared **Stuart Berkman** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

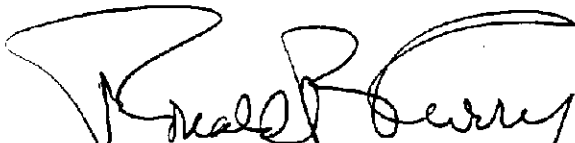


GENEVA JERMIN  
Notary Public, State of New York  
No. 03-4634242  
Qualified in Bronx County  
Commission Expires October 30, 1992

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature:



Ronald B. Curry  
Industry Arbitrator

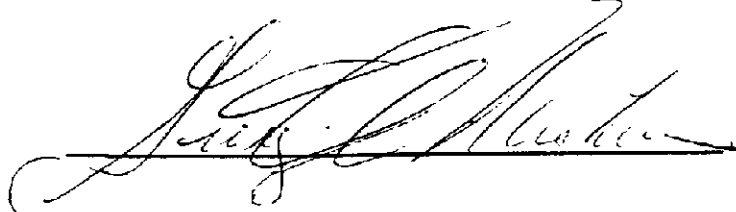
DATED: October 30, 1991



STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 10 day of October, 1991, before me personally appeared **Ronald B. Curry** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



**GEORGI A. MICHELE**  
NOTARY PUBLIC, State of New York  
No. 91-2689850  
Qualified in New York County  
Term Expires 5/21/93