

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :  
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Raffoul Y. and Mary W. Assily JTWROS :  
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Claimants :  
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vs. :  
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Shearson Lehman Hutton, Inc. n/k/a :  
Shearson Lehman Brothers, Inc. and :  
Robert Buschur :  
:   
Respondents :  
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CASE #90-01828

CASE SUMMARY

Pro Se Claimants Raffoul Y. and Mary W. Assily, in a claim filed with the National Association of Securities Dealers, Inc. on June 28, 1990, alleged that Respondent Robert Buschur, assigned by Shearson Lehman Hutton, Inc. now known as Shearson Lehman Brothers, Inc. as their new account representative, failed to advise them of a purchase that he executed for 500 shares of Measurex stock. Claimants state that they called Mr. Buschur to cancel the transaction but that the manager, Ms. Zolciak, told them the transaction was good business and could not be cancelled.

Respondents, in a joint Statement of Answer submitted by Rebecca L. Seltzer, New York, NY, maintained that on March 16, 1990, a "Good Until Cancelled" order for 500 Measurex Corp. shares at \$21.875 was entered in Claimant's account with Mr. Assily's knowledge and consent. Therefore, since these instructions were not cancelled prior to its execution on April 23, the purchase is deemed to have been authorized. They emphasize that Claimants are experienced investors.

Claimants reply that the purchase in question was not authorized and that they have indeed sold their Measurex stock at a loss. They issue a default request for Respondent's failure to Answer the Statement of Claim in the time required.

In their sur-reply, Respondents affirm the points in their Answer and assert that Claimants have not sustained any prejudice because of their delay in submitting the Answer and maintain that the Claimants have no cause of action.

Claimants respond that they were never informed that a new account executive was being assigned to their account and that when they spoke to Mr. Buschur on April 30, 1990, he told them that he was not their financial consultant but happened to find the buy order and actioned it. They affirm their request to Bar the Answer.

#### RELIEF REQUEST

Claimants request damages of One Thousand Seven Hundred Ninety-One Dollars and Thirteen Cents (\$1,791.13).

Respondents request that the Claim be dismissed in its entirety and that Respondents be awarded costs including attorney's fees.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Margaret Kallman, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 18, 1990 and by the Respondent Shearson Lehman Brothers, Inc. on December 10, 1990 and not by Robert Bushur as required by Section 13(d) of the Code of Arbitration Procedure.

And, that the Arbitrator, having considered the proof of the Parties, had decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant's request to Bar the Answer is denied.
2. That the Respondents Shearson Lehman Hutton, Inc. now known as Shearson Lehman Brothers, Inc. and Robert Buschur are jointly and severally liable and shall pay to the Claimants Raffoul Y. and Mary W. Assily the sum of One Thousand Five Hundred Sixty-Four Dollars and Fifteen Cents (\$1,564.15).
3. The parties shall bear their respective costs including attorney's fees.
4. The Fifty Dollars and No Cents (\$50.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

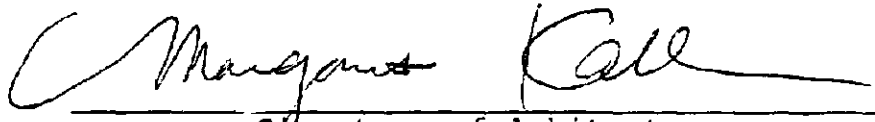
and is assessed jointly and severally against the Respondents Shearson Lehman Brothers, Inc. and Robert Buschur who shall pay Fifty Dollars and No Cents (\$50.00) to Claimants Raffoul Y. and Mary W. Assily.

REPORT OF ARBITRATOR

Upon review of all the pleadings submitted in this case, the Arbitrator concludes that Claimant's new financial consultant, Robert Buschur and Shearson Lehman Brothers, Inc. in its supervisory capacity, should not have executed a five week old "Good Until Cancelled" order without contacting Claimants to introduce Buschur as their new account executive and to ascertain whether or not they still wished to buy the stock in question. In view of the foregoing considerations Respondents did not fulfill their fiduciary duty causing Claimants to be damaged to the extent of One Thousand Five Hundred Sixty-Four Dollars and Fifteen Cents (\$1,564.15).

AFFIRMATION

I, MARGARET KALLMAN, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATED:

August 10, 1991