

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Bowen, Miclette & Descant, Inc.

90-02854

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
Paul C. Davy

REPRESENTATION

For Claimant: Bowen, Miclette & Descant, Inc. was represented by Nancy Wilson Hargrove, Esq. and Robert S. MacIntyre, Jr., Esq. of Baker, Brown, Shuman & Parker, Houston, Texas.

For Respondent: Shearson Lehman Brothers, Inc. (formerly doing business as Shearson Lehman Hutton, Inc.) and Paul C. Davy were represented by Andrew R. Harvin, Esq. of Doyle, Reed, Restopo, Harvin & Robbins, Houston, Texas.

CASE INFORMATION

Statement of Claim filed: October 12, 1990  
Claimant's Submission Agreement signed on: April 18, 1990 by David Miclette, President of Bowen, Miclette & Descant, Inc.

Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Paul C. Davy on: December 31, 1990

Motion to Amend the Statement of Claim filed: September 17, 1991

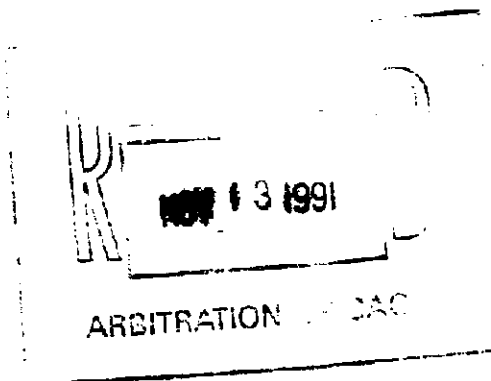
Respondent Shearson Lehman Brother, Inc.'s Submission Agreement signed on: November 13, 1990 by William A. Hohauser, Vice-President, Shearson Lehman Brothers, Inc.

Respondent Paul C. Davy's Submission Agreement signed on: December 28, 1990

HEARING INFORMATION

Hearing Dates/Sessions: September 25, 1991 for two (2) sessions  
September 26, 1991 for one (1) session

Hearing Location: Houston, Texas



### CASE SUMMARY

Claimant Bowen, Miclette & Descant, Inc. ("BMD") alleged that Respondent Paul Davy ("Davy"), while employed by or acting as an agent for Respondent Shearson Lehman Brothers, Inc. ("Shearson"), engaged in the following acts:

1. Misrepresented that the market for the Shearson Lehman Hutton, Inc. High Income Bond Fund was declining in order to induce BMD to sell the fund and invest the funds in other securities;
2. Induced BMD to invest in securities such as Compaq Computer Corporation stock which were unsuitable given BMD's investment objectives of nonspeculative securities for conservative investors which would be held for short periods of time;
3. Recommended and engaged in excessive and unsuitable trading in the account to generate fees and commission income for the benefit of Respondents; and
4. Provided a summary of account activity to the Claimant which was materially false and misleading and was relied on by Claimant.

Furthermore, BMD alleged that Shearson failed to supervise and use reasonable diligence in the supervision of Davy, failed to establish and implement appropriate supervisory procedures, and failed to investigate Claimant's investment objectives and the investments recommended and directed for Claimant. Based upon the above allegations, BMD asserted violations of the federal securities laws and Rule 10b-5 of the Securities Exchange Act of 1934, Article 581-33A(2) of the Texas Securities Act; common law fraud; violations of Rules of the New York Stock Exchange and the NASD Rules of Fair Practice.

Respondents Shearson and Davy denied the material allegations of the Statement of Claim, further alleging that:

1. BMD expressed an objective of generating high yield on its assets in the account without great risk;
2. Davy had reasonable grounds for believing that his recommendations were suitable for BMD based upon the facts disclosed by David Miclette as to BMD's financial situation, needs and objectives;
3. The principals of BMD were sophisticated businessmen who had the education, financial acumen and experience to understand the risks, as well as the reward, of investing in the bond and stock markets;
4. BMD received monthly statements and trade confirmations disclosing the details of each trade, including commissions charged;
5. In October of 1988, Davy and Miclette discussed a reassessment

of investment strategy to invest in a portfolio of stocks and to write covered calls against these stocks. Davy considered the strategy to be conservative, although not without risk, and Miclette approved the strategy as well as the purchase of Compaq stock and the writing of covered calls; and

6. BMD is barred from asserting its claims against Davy and Shearson by the doctrine of laches.

#### RELIEF REQUESTED

Claimant Bowen, Miclette & Descant, Inc. requested entry of an award against Respondents Shearson and Davy, jointly and severally, for \$82,750.00 in actual damages; punitive damages in the sum of \$165,000.00 to punish Respondents for their wrongful conduct and to deter Respondents from engaging in such conduct in the future; for all of Claimant's costs, expenses and disbursements, including reasonable attorneys' fees; and for such other relief as the arbitration panel deems just and proper.

Respondents Shearson and Davy requested that the panel enter an award directing that BMD take nothing by reason of its claims, and awarding their reasonable attorneys' fees, their costs and such further relief as the panel may deem just.

#### OTHER ISSUES CONSIDERED AND DECIDED

On September 17, 1991, Respondents Shearson and Davy filed a Motion to Amend the Statement of Answer. The motion was presented to the panel before opening arguments on September 25, 1991 and the motion was unobjected to by Claimant. The panel initially took the matter under advisement. The motion was subsequently granted and the Answer was amended to include an allegation that all actions brought under Section 10b of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78j, and Rule 10b-5 promulgated thereunder, are governed by a one-year limitations period.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and post hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the 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 original(s) remain on file with the NASD;
2. The Statement of Claim is hereby dismissed and denied in its entirety and Claimant Bowen, Miclette & Descant, Inc. shall take nothing on its claims;

3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

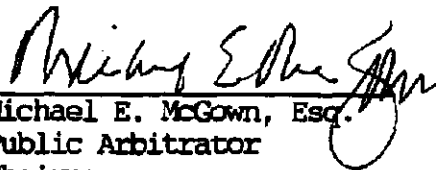
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously filed by the Claimant Bowen, Miellette & Descant, Inc. Respondent Shearson Lehman Brothers Inc. is liable for and shall pay to the NASD forum fees in the sum of \$750.00. Respondent Paul Davy is liable for and shall pay to the NASD forum fees in the sum of \$750.00.

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

BY THE ARBITRATION PANEL

Dated:

  
Michael E. McGown, Esq.  
Public Arbitrator  
Chairperson

8 November 1991

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Gregor H. Reisser  
Public Arbitrator

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Ronald R. Simpson  
Industry Arbitrator

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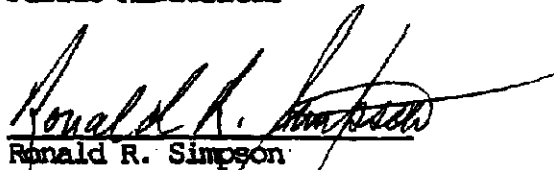
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Chairperson

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