

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	)	
<u>Name of Claimant(s)</u>	)	
Glenda Rose, on behalf of the	)	
Glenda Rose Trust	)	
	)	Case No. 90-03590
<u>Name of Respondent(s)</u>	)	
Shearson Lehman Brothers, Inc.	)	

REPRESENTATION

For Claimant, Glenda Rose Trust ("Rose"): Patricia A. Shub, Esq. of Shub & Barclay, P.A.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"): Lonnie Browne Zangrillo, Esq. of Boose Casey Ciklin Lubitz et al.

CASE INFORMATION

Statement of Claim filed on: April 10, 1991.

Claimant's Submission Agreement signed on: February 15, 1991.

Statement of Answer filed on: June 24, 1991.

Respondent's Submission Agreement signed by William Hohausser, Esq. on June 5, 1991 on behalf of Shearson.

HEARING INFORMATION

On December 16, 1991, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent, through account executive Sandy Rywell ("Rywell"), was aware that the investment objectives of the trust were moderate income without risk to principal; that all transactions were made upon the specific advice of Rywell; that Respondent, through Rywell,

recommended and effected transactions in unsuitable securities, namely limited partnership units; made misrepresentations of and omitted to state material facts; that Respondent's actions constituted negligent hiring and supervision, breach of fiduciary duty, fraud and violation of Section 517.301, Florida Statutes.

Respondent denied all allegations of wrongdoing and alleged that the limited partnership investment was suitable; no guarantees were made; when the value declined, Leon Srago ("Srago") the trustee's father, made the decision to hold the position; and, none of the events causing the loss were within Shearson's control.

Respondent alleged the affirmative defenses of failure to state a claim; assumption of risk; bar by ratification, account stated, estoppel, waiver and laches; failure to use due diligence to mitigate damages; contributory negligence; failure to promptly complain; damages not caused by Shearson; statute of limitations; tort damages precluded by contract; punitive damages precluded by United States and Florida Constitutions; no scienter; and, panel is without jurisdiction to award attorney's fees.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$24,050.00, interest at the legal rate, punitive damages, rescission, attorney's fees, costs and other relief.

Respondent requested dismissal and costs.

#### AWARD

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

1. Respondent is found liable and shall pay to the Claimant the amount of \$12,125.00.
2. Claimant's requests for interest, attorney's fees, costs, and punitive damages are denied.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$600.00 (two sessions x \$300.00). Respondent is hereby assessed \$600.00, \$300.00 of which shall be paid directly to the Claimant and \$300.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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

Arbitrator's Signature

/s/  
Howard E. Kurzweil, Esq.

Public

Date of Decision: December 23, 1991