

## N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

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In the Matter of the Arbitration Between

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Name of Claimants

Daniel Epstein  
Rachael Epstein  
Ellen Cory Epstein

91-00199

Name of Respondent

Shearson Lehman Brothers, Inc.

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REPRESENTATION

For Claimants Daniel Epstein, Rachael Epstein and Ellen Epstein  
("Claimants"): Richard Dorff, of Mintz & Fraade.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson"):  
Paul R. Williams, of Schupbach, Williams et al.

CASE INFORMATION

Statement of Claim filed: each Claimant filed an individual Statement of Claim on January 10, 1991.  
Claimant Daniel Epstein's Submission Agreement signed on: June 25, 1990.  
Claimant Ellen Cory Epstein's Submission Agreement signed on: June 15, 1990.  
Claimant Ruth Epstein's Submission Agreement signed on: June 26, 1990.

Statement of Answer filed by Respondent on: Respondent filed an individual Statement of Answer for each Claimant on November 5, 1991.  
Respondent Shearson's Submission Agreement signed on: June 26, 1991.

HEARING INFORMATION

Hearing Date/Sessions: March 16, 1992/2 sessions.  
Hearing Location: NASD, New York City, New York.

CASE SUMMARY

Claimant Daniel Epstein alleged Shearson recommended unsuitable investments for Claimant; misrepresented the Units of a Limited Partnership of Commonwealth Mortgage of America ("Commonwealth"); and failed to provide Claimant with any disclosure documents until Commonwealth units were worthless.

AWARD  
#91-00199  
Page Two

Claimant Ellen Cory Epstein alleged Shearson recommended unsuitable investments for Claimant; misrepresented the Units of a Limited Partnership of Commonwealth Mortgage of America ("Commonwealth"); and failed to provide Claimant with any disclosure documents until Commonwealth units were worthless.

Claimant Rachael Epstein alleged Shearson recommended unsuitable investments for Claimant; misrepresented the Units of a Limited Partnership of Commonwealth Mortgage of America ("Commonwealth"); and failed to provide Claimant with any disclosure documents until Commonwealth units were worthless.

Respondent alleged the investments for Daniel Epstein were consistent with his financial objectives and investment history at the time of purchase. Respondent maintained Claimant was given a prospectus when he first invested in Commonwealth and was aware of the potential fluctuation in the value of the units and made a decision to purchase additional units. Respondent stated all purchasers were provided by Respondent with the prospectus, in the case of Claimant's initial purchase, but secondary sales were conducted on the open market and prospectuses were not required; nor did Respondent and its representatives make any untrue statements of fact or withhold any material information.

Respondent alleged Claimant Ellen Cory Epstein was aware, from her prior experiences, that the risk of an investment varied proportionately with its yield and that the value of her investments were subject to fluctuations; she frequently requested and reviewed from her broker research materials on many of her investments; she had maintained active investment accounts with Respondents; the investment was suitable for Claimant; Claimant discussed her purchases with Claimant Rachael Epstein and Claimant Daniel Epstein who purchased units in the same partnership at different times, at varying prices; and that Respondent supplied Claimant with the required disclosure documents in connection with her purchase.

Respondent Shearson alleged Claimant had maintained active investment accounts with Respondent; was aware from her prior experiences that the risk of an investment varied proportionally with its yield; the investment was suitable for Claimant; Claimant discussed her purchases with Claimant Ellen Cory Epstein and Claimant Daniel Epstein who purchased units in the same partnership at varying prices; and that Claimant was supplied with required disclosure documents in connection with her purchase.

RELIEF REQUESTED

Claimant Daniel Epstein requested: compensatory damages in the amount of \$6,896.00; pre-award interest; costs and disbursements; and attorneys' fees.

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AWARD  
#91-00199  
Page Three

Claimant Ellen Cory Epstein requested: compensatory damages in the amount of \$10,341.75; pre-award interest; costs and disbursements; and attorneys' fees.

Claimant Rachael Epstein requested: compensatory damages in the amount of \$12,397.95; pre-award interest; costs and disbursements; and attorneys' fees.

Respondent Shearson requested: the Statement of Claim for each Claimant be dismissed in all respects; attorneys' fees; costs and disbursements.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

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- The Respondent is liable and shall pay to Claimant Rachael Epstein the amount of \$3,600.00, interest specifically denied;
- 2- The claims of the Claimants Daniel Epstein and Ellen Cory Epstein are dismissed;
- 3- All other claims are dismissed;
- 4- The parties shall each bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee and the following Forum Fees are assessed

2 sessions X \$300.00 = \$600.00

Forum fees Assessed Against:

- 1- Claimants in the amount of \$300.00; however, in lieu of payment, the NASD shall retain Claimants' \$300.00 hearing session deposit;
- 2- Respondent, in the amount of \$300.00.

**NASD**

Arbitration

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AWARD  
#91-00199  
Page Four

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

Allen Kilik  
Allen Kilik/Public Arbitrator

Date of Decision: March 16, 1992