

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Frederick W. Gooding  
Frederick W. Gooding, Inc.

vs.

91-00432

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
Philip J. Failla

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REPRESENTATION

For Claimants: Phillip G. Samovar, Esq., Santa Monica, California

For Respondents: Michele R. Fron, Esq., Kessal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed: February 8, 1991

Claimants' Submission Agreements signed on: as individual: January 24, 1991

Claimants' Submission Agreements signed on: as corporation: April 24, 1991

Joint Statement of Answer filed by Respondents on: June 28, 1991

Respondents' Submission Agreements signed on:

Shearson Lehman: July 8, 1991

Phillip J. Failla: June 24, 1991

HEARING INFORMATION

Hearing Date/Sessions: March 11, 1992 (2 sessions)

March 12, 1992 (2 sessions)

Hearing Location: Los Angeles, California.

### CASE SUMMARY

Claimants alleged, as amended at hearing, unsuitability, unauthorized trading and breach of fiduciary duty with respect to investments in the common stock of ICN Pharmaceutical, SPI Pharmaceutical and Vira-tek.

Respondents denied all allegations, and asserted that Dr. Gooding was sophisticated, knowledgeable investor who was fully informed of all particulars before he made his own investment decisions.

### RELIEF REQUESTED

Claimants requested damages of \$154,998, plus interest, punitive damages and attorney's fees.

Respondents requested dismissal of all claims.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

This claim was originally filed in Federal District Court for the Central District of California, on July 2, 1987, case #CV 87-4307-FMR, alleging state and federal law violations. The state law claims only were compelled to arbitration by Order of that Court (affirmed on appeal to the U.S. Court of Appeals for the Ninth Circuit) on April 11, 1990.

### AWARD

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

1. All claims, including the claim for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

### OTHER COSTS

None.

FORM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$750 hearing session deposit previously deposited by the claimant. Additional forum fees are assessed as follows:

\$750 against Respondents, jointly and severally.

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

ARBITRATION PANEL

Public/Industry

Public

Public

Industry

Concurring Arbitrators' Signature

  
\_\_\_\_\_  
Aaron Fenton

DATE SERVED: 3/27/92

Date of Decision: \_\_\_\_\_