

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Terry Harper

91-00508

Name of Respondents

Shearson Lehman Brothers, Inc.
The Robinson Humphrey Company, Inc.
William L. Effinger, III
Oscar Ayala, Jr.

REPRESENTATION

For Claimant: Mark H. Levison, Esq. and Howard S. Smotkin, Esq. of the law firm of Riezman & Blitz, P.C.

For Respondents: Shearson Lehman Brothers, Inc., The Robinson Humphrey Company, Inc. and William L. Effinger, III were represented by Peter J. Anderson, Esq. of the law firm of Peterson, Dillard Young Self & Asselin.

Oscar Ayala, Jr. did not appear.

CASE INFORMATION

Statement of Claim filed on: February 15, 1991.

Letter dated February 26, 1991 from Mark H. Levison to Candyce Williams citing authority for request for Punitive Damages filed on: February 28, 1991.

Reply in Support of Claimant's Request For Punitive Damages filed on: September 30, 1991.

First Amended Statement of Claims submitted. Claimant's Amendment by Interlineation of First Amended Statement of Claims filed on: September 17, 1991.

Claimant's Submission Agreement signed on: February 7, 1991.

Respondents Shearson Lehman Brothers, Inc. ("Shearson"), The Robinson Humphrey Company, Inc. ("Robinson Humphrey") and William L. Effinger, III ("Effinger") Response to Claimant's Statement of Claims filed on: April 11, 1991.

Reply of Shearson, Robinson Humphrey and Effinger to First Amended Statement of Claims filed on: May 6, 1991.

Supplemental Brief of Respondents Shearson, Robinson Humphrey and Effinger Regarding Attorneys' Fees and Punitive Damages filed on: August 23, 1991.

Respondents Shearson, Robinson Humphrey and Effinger's Response to Claimant's Amendment by Interlineation of First Amended Statement of Claims filed on: September 27, 1991.

Respondent Shearson's Submission Agreement signed on: June 25, 1991.

Respondent Robinson Humphrey's Submission Agreement signed on: September 3, 1991.

Respondent Effinger's Submission Agreement signed on: June 25, 1991.

The Respondent Oscar Ayala, Jr. ("Ayala") did not sign a Submission Agreement as required pursuant to Section 25(b) (1) of the Code of Arbitration Procedure and did not submit a Statement of Answer.

HEARING INFORMATION

Hearing Dates/Sessions: September 27, 1991, 1 Session.
October 3, 1991, 2 Sessions.
October 4, 1991, 2 Sessions.
December 3, 1991, 2 Sessions.
December 4, 1991, 2 Sessions.
December 5, 1991, 2 Sessions.
January 27, 1992, 2 Sessions.
January 28, 1992, 2 Sessions.
February 6, 1992, 3 Sessions.
February 7, 1992, 3 Sessions.

Hearing Location: Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that notwithstanding his stated investment objectives, Respondents took advantage of his lack of sophistication by engaging in a plot directed primarily at professional athletes to abuse the relationship of trust and confidence. Claimant further alleged this plot included various schemes, devices and conduct relating not only to securities bought and sold and purportedly bought and sold, but also to the transfer of funds into and from accounts, borrowing or converting funds or securities from the account

and borrowing from clients and engaging in a course of conduct which abused the Claimant's checking and credit card privileges connected with his accounts. Claimant further alleged Respondent Ayala's specific representations and encouragements, and the remaining Respondents' knowledge of Ayala's methods, caused Claimant to spend funds and engage in a lifestyle which he otherwise would not have followed had he been made aware of the actual deterioration in his financial situation caused by the Respondents. Claimant further alleged Respondents induced Claimant to invest in a series of alleged limited partnerships and other securities which were unsuitable for him and made misrepresentations concerning those investments, which Claimant relied on to his detriment, and alleged that Respondents breached the fiduciary duty owed the Claimant. Claimant further alleged the Respondents Shearson, Robinson Humphrey and Effinger failed to properly supervise Respondent Ayala and should have been aware of the fact that he was not earning enough money through legitimate means to sustain the lifestyle he was living, among other "red flags" they should have realized to inform them of Ayala's improper conduct. Claimant further alleged Respondents' actions entitled him to punitive damages for their wilful and wanton disregard of their moral and legal responsibilities, and to attorney's fees and cited legal authority for such damages.

Respondents Shearson, Robinson Humphrey and Effinger maintained the cause of Claimant's losses, if any, was the joint conduct of Claimant and Ayala as Ayala was Claimant's personal friend and registered representative at Robinson Humphrey. Respondents Shearson, Robinson Humphrey and Effinger further maintained without Respondents' knowledge or authorization Ayala acted beyond the course and scope of his employment by encouraging Claimant to enter into business transactions outside Respondents' control and supervision and off Respondents' books and Claimant assisted Ayala in evading detection. Respondents Shearson, Robinson Humphrey and Effinger further maintained Claimant received a confirmation from Respondents after each transaction in his account and if he relied upon Ayala's representations instead of Respondents' documentation, then it was his own conscious decisions to trust his friendship more than sound judgement concerning Respondents' written representations. Respondents Shearson, Robinson Humphrey and Effinger further maintained Claimant's gross contributory and comparative negligence brought about his own alleged losses and exonerate Respondents and to the extent that Claimant intentionally ignored the representations of his professional financial advisors including the Sports Management Group, this ignorance was based upon Claimant's intent to spend more than his own hired professionals told him he could spend.

In response to Claimant's request for attorney's fees and punitive damages Respondents Shearson, Robinson Humphrey and Effinger maintained Claimant's claims for attorney's fees under state and federal securities laws are misplaced because the statutes of limitations have run with respect to all of

these claims; under Georgia law attorney's fees in arbitration are not allowed and the "American Rule" provides that there can be no recovery of attorney's fees to the prevailing party unless special circumstances or a statute provide otherwise. The Respondents Shearson, Robinson Humphrey and Effinger further maintained with respect to Claimant's request for punitive damages that Claimant has clearly failed to set forth grounds for his request as Claimant bears much responsibility for Ayala's ability to escape the detection of Respondents' supervision and Respondents Shearson, Robinson Humphrey and Effinger should not be punished for conduct Claimant aided, and Respondents' actions regarding Ayala's conduct that was within the scope of his employment do not warrant punitive damages.

RELIEF REQUESTED

Claimant requested an Award as follows:

- (a) Against Respondents on the Section 10b, Rule 10b-5 and 20(a), securities laws claims and the aiding and abetting claims, jointly and severally, in an amount according to proof but not less than \$142,780.00 actual damages, plus prejudgment interest;
- (b) Against Respondents on the Section 12(2) and Section 15 securities laws claim, jointly and severally, in an amount according to proof but not less than \$142,780.00 actual damages, plus interest and attorney's fees;
- (c) Against Respondents on the state securities laws violations, jointly and severally, in an amount according to proof but not less than \$142,780.00, with interest thereon from the date of each payment until the date of repayment less any income paid thereon as actual damages, treble the amount of actual damages, and attorney's fees;
- (d) Against Respondents on the remaining counts, jointly and severally in an amount according to proof but not less than \$238,040.00 in actual damages, punitive damages of \$2,000,000.00, and attorney's fees;
- (e) Against Respondents jointly and severally as to all counts except Section 12(2) and Section 15 of the Securities Act of 1933, the amount of lost income and appreciation according to proof but not less than \$150,000.00; and
- (f) Against Respondents jointly and severally as to all counts, the cost of this arbitration, and such other and further relief as this Panel deems just and proper.

Respondents Shearson, Robinson Humphrey and Effinger requested dismissal of all claims against them and a denial of Claimant's claim for attorneys' fees and punitive damages.

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. In accordance with Section 1 of the Code of Arbitration Procedure, the panel ruled that it has jurisdiction over Respondent Ayala;
2. In accordance with Section 25 of the Code of Arbitration Procedure, the Respondent Ayala was served with the Statement of Claim and given an opportunity to respond which he failed to do;
3. In accordance with Sections 21 and 26 of the Code of Arbitration Procedure, the Respondent Ayala was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;
4. In accordance with Section 29 of the Code of Arbitration Procedure, the arbitration panel determined in light of the foregoing information that the Respondent Ayala had adequate notice of the hearing and determined to proceed with him as a Respondent in this action;
5. Attached and made a part of this Award are Respondents Shearson, Robinson Humphrey and Effinger's Exhibits 55 and 56 which are respectively "Stipulation As To Facts Shown In Respondents' Exhibits 25 and 27" and "Stipulation And Identification As To Exhibit 25". In view of these stipulations, the Award of compensatory damages has been reduced;
6. The Respondent Effinger be and hereby is liable and shall pay to the Claimant the sum of \$5,000.00 in compensatory damages, inclusive of interest;
7. The Respondent Effinger be and hereby is liable and shall pay to the Claimant the sum of \$25,000.00 to represent punitive damages pursuant to the case law in the Eleventh Circuit and Georgia statutory law cited by Claimant's counsel;
8. The Respondents Shearson and Robinson Humphrey be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$10,000.00 in compensatory damages, inclusive of interest;
9. The Respondents Shearson and Robinson Humphrey be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$15,000.00 to represent punitive damages pursuant to the case law in the Eleventh Circuit and Georgia statutory law cited by Claimant's counsel;

10. The Respondents Shearson and Robinson Humphrey be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$58,000.00 to represent attorney's fees and legal costs incurred pursuant to case law in the Eleventh Circuit and Georgia statutory law cited by Claimant's counsel;
11. The Respondent Ayala be and hereby is liable and shall pay to the Claimant the sum of \$10,000.00 in compensatory damages, inclusive of interest; and
12. The Respondent Ayala be and hereby is liable and shall pay to the Claimant the sum of \$1,000,000.00 in punitive damages pursuant to the case law in the Eleventh Circuit and Georgia statutory law cited by Claimant's counsel.

FORUM FEES

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

20 Sessions X \$1,000.00 = \$20,000.00 minus hearing session deposit
of \$1,000.00 = net \$19,000.00 due.

The Respondent Effinger be and hereby is liable and shall pay to the NASD the sum of \$19,000.00 to represent forum fees.

The Respondents Shearson and Robinson Humphrey be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$300.00 as the cost of the pre-hearing conference and shall pay to the Claimant the sum of \$1,250.00 to reimburse him for the filing fees paid.

The NASD shall retain the \$250.00 claim filing fee previously paid by the Claimant.

CONCURRING ARBITRATOR SIGNATURE


Daniel E. Gilden

Public Arbitrator


Kenneth W. Rickert, Esq.

Public Arbitrator


James L. Shoemaker

Industry Arbitrator

Date of Decision: MAR 26 1992

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BEFORE THE NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.

TERRY J. HARPER,

Claimant,

SHEARSON LEHMAN HUTTON, INC.,
THE ROBINSON-HUMPHREY
COMPANY, INC.,
WILLIAM L. EFFINGER, III,
and OSCAR AYALA,


Respondents.

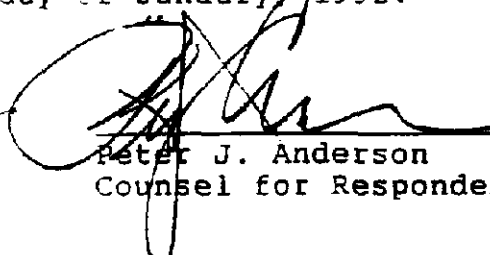
CASE NO. 91-00508

STIPULATION AS TO FACTS SHOWN IN RESPONDENTS'
EXHIBITS 25 and 27

COME NOW Claimant Terry J. Harper ("Claimant") and Respondents Shearson Lehman Hutton, Inc., The Robinson-Humphrey Company, Inc., and William L. Effinger, III ("Respondents") and herein stipulate that the figures shown in Respondents' Exhibit 25 and Exhibit 27, as amended, also known respectively as "Money Back to Harper" and "Analysis of Debits/Credits in Acct. Nos. 411-23409 and 411-42746," are true and correct. It is acknowledged and agreed, however, that Claimant disputes Respondents' claim that such amounts are appropriate offsets. A true and correct copy of Exhibit 25 and Exhibit 27 as amended are attached hereto as Exhibits "A" and "B", respectively, and are incorporated herein by reference as if fully set forth.

SO STIPULATED this 6th day of February 1992.


Mark Levison
Counsel for Claimant


Peter J. Anderson
Counsel for Respondents

MONEY BACK TO HARPER

A. CHECKS FROM AYALA

2/25/88	17,000.00
8/3/88	15,000.00
5/25/89	\$10,000.00
4/25/89	<u>10,000.00</u>

\$ 52,000.00 (A)

B. AMEX CHARGES

7/25/88	\$560.00 (B)
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C. JOURNALS INTO RH ACCT. NO. 411-23409

2/4/88	\$ 150,000.00
11/16/89	<u>40,000.00</u>

From Tigner
From Daniel

\$ 190,000.00 (C)

D. FMA CHECKS FROM AYALA'S ACCT. # 81304

<u>Ck.#</u>	<u>Date</u>	<u>Amount</u>
116	11/25/87	\$ 12,000.00
147	7/12/88	<u>850.00</u>
TOTAL		\$ 12,850.00 (D)

(Cleared 11/30/87)

TOTAL: A, B & C	\$ 242,560.00
D	<u>12,850.00</u>
	<u>\$ 255,410.00</u>

EXHIBIT "A"

ANALYSIS OF DEBITS/CREDITS
IN ACCT. NO. 411-23409

<u>DATE</u>	<u>CHECK DEPOSITS AND JOURNAL DEPOSITS</u>	<u>BR. CHECKS & JOURNALS OUT</u>	<u>FMA CHECKS OUT</u>	<u>GOLD CARD CHARGES</u>	<u>MARGIN INTEREST CHARGED</u>
9/83	37,876.97*				
10/83	3,000.00	1,421.19			
11/83	7,083.35		19,800.00		
12/83	5,129.94		13,893.53		
	<u>53,090.26</u>	<u>1,421.19</u>	<u>33,693.53</u>		

* Beginning Portfolio Value transferred from ACCT. NO. 410-04773, including 3,861.58 deposit.

1/84	-0-		2,126.68		
2/84	-0-		2,336.71		
3/84	-0-		3,560.02		
4/84	4,703.22		1,108.77		
5/84	6,847.22		3,033.74		
6/84	7,063.00		4,729.30		
7/84	10,081.91		1,866.84	126.84	
8/84	2,000.00		1,465.63	84.12	
9/84	12,699.31		2,758.17	42.44	
10/84	4,587.31		13,108.77	-0-	
11/84	10,832.28		10,220.10	135.64	
12/84	11,124.56		4,342.77	203.51	
	<u>69,938.81</u>		<u>50,657.50</u>	<u>592.55</u>	

1/85	5,200.00		3,408.77	435.74	
2/85	-0-		6,423.72	96.50	
3/85	13,078.26		1,663.78	-0-	
4/85	17,177.75		5,458.80	-0-	
5/85	12,369.82		31,836.77	261.35	
6/85	12,490.28		3,245.56	235.00	
7/85	13,970.28		3,834.10	141.70	
8/85	76,660.68		7,219.77	133.10	
9/85	12,561.08		22,968.59		
10/85	15,626.47	32,400.00	1,798.21	1,272.08	
11/85	20,901.53	7,077.50	33,575.85		
12/85	-0-	54,666.00	8,705.92	234.27	
	<u>200,036.15</u>	<u>94,143.50</u>	<u>130,139.84</u>	<u>2,809.74</u>	

DATE	CHECK DEPOSITS AND JOURNAL DEPOSITS	BR. CHECKS & JOURNALS OUT	FMA CHECKS OUT	GOLD CARD CHARGES	MARGIN INTEREST CHARGED
1/86	3,975.00	1,000.00	445.68	2258.60	
2/86	5,000.00	2,437.00	3,295.62	243.21	
3/86	21,231.62	1,734.63	673.85	-0-	
4/86	37,324.74	21,361.00	6,045.85	125.52	
5/86	38,050.56	-0-	30,941.85	190.39	88.97
6/86	30,201.92	-0-	20,914.61	304.08	72.73
7/86	39,975.56	1,900.00	16,601.00	359.84	9.33
8/86	54,493.78	2,137.00	25,232.06	660.83	126.40
9/86	23,412.30	-0-	37,661.13	-0-	389.54
10/86	34,868.35	4,007.21	22,576.02	46.74	412.40
11/86	-0-	-0-	31,933.03	6773.00	439.28
12/86	-0-	10.00	24,532.42	3,024.03	678.37
	<u>288,533.83</u>	<u>34,586.84</u>	<u>220,853.12</u>	<u>13,986.24</u>	<u>2217.02</u>

1/87	24,754.36	750.00	16,613.86	841.09	38.88
2/87	26,078.00	-0-	30,784.24	4,390.35	-0-
3/87	2,381.68	-0-	2,709.00	-0-	-0-
4/87	5,000.00	-0-	4,466.55	-0-	-0-
5/87	31,084.03	-0-	31,457.77	1,864.47	28.93
6/87	34,453.90*	158.96	8,927.66	658.84	-0-
7/87	18,244.02	10,520.00	22,323.87	200.71	-0-
8/87	6,013.57	-0-	12,680.92	844.85	106.05
9/87	12,171.18	2,500.00	9,159.46	186.79	139.73
10/87	26,097.44	-0-	18,396.50	157.00	125.06
11/87	13,686.76	40.00	25,328.64	-0-	167.86
12/87	24,582.93	3,050.00	8,962.82	4,915.64	221.41
	<u>224,547.87</u>	<u>17,018.96</u>	<u>191,811.29</u>	<u>14,059.74</u>	<u>827.92</u>

* Includes 50,000 St. Ann. Mo. 1DB @ 44 = \$22,000

1/88	182,773.12	10.00	31,353.17	2,161.21	108.00
2/88	150,000.00		36,600.92	2,561.05	-0-
3/88	-0-		5,035.75	797.44	-0-
4/88	77,000.00		20,000.00	-0-	27.78
5/88	110,000.00		1,226.73	632.00	9.53
6/88	3,000.00		24,800.00	610.13	-0-
7/88	36,000.00	207,000.00*	31,923.60	1,670.09	220.48
8/88	-0-		27,270.00	1,791.86	431.22
9/88	31,570.00	8,440.00	19,674.70	1,868.11	551.28
10/88	40,000.00	50,000.00	-0-	1,676.09	526.70
11/88	25,000.00	100.00	1,000.00	650.01	179.02
12/88	20,000.00		30,351.27	6,227.34	172.32
	<u>675,343.12</u>	<u>265,550.00</u>	<u>229,236.14</u>	<u>20,645.33</u>	<u>2,226.33</u>

* Includes 200,000 Keystone Annuity Bought 3/88. Delivered to Client 7/12/88

DATE	CHECK DEPOSITS AND JOURNAL DEPOSITS	BR. CHECKS & JOURNALS OUT	FMA CHECKS OUT	GOLD CARD CHARGES	MARGIN INTEREST CHARGED
1/89	-0-	6,756.87	17,200.00	1,732.00	260.93
2/89	-0-	-0-	7,792.85	1,299.00	237.52
3/89	-0-	6.50	24,474.04	39.00	5.90
4/89	-0-	-0-	14,313.85	924.97	154.27
5/89	-0-	-0-	13,948.08	352.90	-0-
6/89	-0-	-0-	32,000.00	488.14	60.29
7/89	28,000.00	35,100.30	11,215.00	9,671.96	197.28
8/89	106,725.00	85,040.00	14,051.50	-0-	250.78
9/89	96,985.00	10.00	45,148.62	605.60	642.31
10/89	-0-	24,171.00	33,152.92	2,131.94	698.50
11/89	40,800.00	8,020.00	8,471.42	1,200.00	969.93
12/89	-0-	2,000.00	8,509.68	16,437.54	1,195.45
	<u>272,510.00</u>	<u>161,104.67</u>	<u>230,277.96</u>	<u>34,883.05</u>	<u>4,673.16</u>
1/90	-0-	709.00	-0-	39.00	816.78
2/90	-0-	3,561.00	-0-	35.00	988.52
3/90	500.00	-0-	-0-	39.00	937.45
4/90	-0-	-0-	-0-	39.00	1,104.82
5/90	6,248.00	4,303.84	-0-	78.00	947.77
6/90	-0-	-0-	-0-	-0-	1,032.94
7/90	-0-	-0-	-0-	-0-	1,059.48
8/90	-0-	-0-	-0-	240.06	954.37
9/90	-0-	-0-	-0-	-0-	989.64
10/90	-0-	2,036.85	-0-	39.00	661.63
	<u>6,748.00</u>	<u>10,610.69</u>	<u>-0-</u>	<u>509.06</u>	<u>9,493.40</u>
1983	53,090.26	1,421.19	33,693.53	-0-	-0-
1984	69,938.81	-0-	50,657.50	592.55	-0-
1985	200,036.15	94,143.50	130,139.84	2,809.74	-0-
1986	288,533.83	34,586.84	220,853.12	13,986.24	2,217.37
1987	224,547.87	17,018.96	191,811.29	14,059.74	827.92
1988	675,343.12	265,550.00	229,236.14	20,645.33	2,227.11
1989	272,510.00	161,104.00	230,277.96	34,883.05	4,673.16
1990	6,748.00	10,610.69	-0-	509.06	9,493.40
	<u>-1,790,748.04</u>	<u>584,435.18</u>	<u>1,086,669.38</u>	<u>87,485.71</u>	<u>19,438.96</u>

+1,778,029.20

-12,718.84

27,239.93 Plus Difference Sec. Del'd and Debit (See Below)

+14,521.09 Excess Money/Securities Out of Account

Securities Delivered Out:

10/12	Delivered to	25,000.00	Dekalb Co.
	MLPF&S	65,000.00	FMAE
		<u>50,000.00</u>	Marta Bonds

Securities Del'd Out: 140,000.00

Less Debit Balance: 112,760.07

Difference: 27,239.93

ANALYSIS OF DEBITS/CREDITS
IN ACCT. NO. 42746

<u>DATE</u>	<u>DESCRIPTION</u>	<u>BOT</u>	<u>SOLD</u>	<u>PROFIT</u>	<u>LOSS</u>	<u>COMM.</u>
12/2/88	30 SKLB Mar. 55	3,238.90				238.90
			6,268.42			291.86
2/9/89	30 SKLB Mar. 55			3,029.52		
9/26/89	1000 Sh.Nutmeg	17,252.00	- Transferred			750.00

	<u>\$ IN</u>	<u>\$ OUT</u>	<u>MARGIN INT.</u>
12/88		-0-	17.97
1/89	3,256.87	-0-	26.90
2/89		6,000.00	-0-
3/89	-0-	-0-	-0-
4/89	-0-	-0-	-0-
5/89	-0-	-0-	-0-
6/89	-0-	-0-	-0-
7/89	-0-	-0-	-0-
8/89	-0-	-0-	-0-
9/89	8,371.00		104.88
10/89	-0-	-0-	-0-
11/89	1,030.00	-0-	84.75
12/89	-0-		98.82
1/90	709.00		61.65
2/90	3,561.00		51.15
3/90	-0-	500.00	33.33
4/90			43.63
5/90	4,303.84	5,748.00	19.25

-21,231.97	12,248.00	542.33
<u>-12,790.33</u>		
-8,441.64	NET LOSSES IN ACCT. NO. 42746	

BEFORE AN ARBITRATION PANEL OF THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

TERRY J. HARPER,)	
)	
Claimant,)	
)	
v.)	CASE NO. 91-00508
)	
SHEARSON LEHMAN HUTTON, INC.,)	
THE ROBINSON-HUMPHREY COMPANY,)	
INC., WILLIAM L. EFFINGER, III,)	
and OSCAR AYALA,)	
)	
Respondents.)	

STIPULATION AND INDEMNIFICATION AS TO EXHIBIT 25

Respondents Shearson Lehman Brothers, Inc., The Robinson-Humphrey Company, Inc., and William L. Effinger, III (hereinafter referred to as "Respondents") have set forth in their collective Exhibit 25 monies which Claimant Terry Joe Harper received back, either from Oscar Ayala or from third parties, directly into his Robinson-Humphrey account number 411-23409 or in the form of checks from Ayala which Harper deposited at other financial institutions. Claimant has stipulated that the numbers are true and correct; however, Claimant contests Respondents' right to claim the money as an offset to any award which may ultimately be determined in this arbitration. In an effort to address this concern, Respondents hereby agree to the following stipulation and agree to indemnify Claimant as it relates to the specifically enumerated items set forth in Exhibit 25 and which appear below.

Respondents do hereby irrevocably and unconditionally indemnify and shall hold Claimant Terry Joe Harper harmless from, against, and in respect to any and all claims, causes of action, damages, losses, liabilities, assessments, judgments, awards, costs and expenses arising with respect to or related directly to the following individuals and items:

1) As against Oscar Ayala, Jr. for the following items:

- (a) Check No. 189 drawn on Ayala's Georgia Federal Bank Account No. 14 078 208-02 dated 2-25-88 in the amount of \$17,000, payable to Terry J. Harper.
- (b) Check No. 254 drawn on Ayala's Georgia Federal Bank Account No. 14 078 208-02 dated 8-3-88 in the amount of \$15,000, payable to Terry J. Harper.
- (c) Check No. 308 drawn on Ayala's Georgia Federal Bank Account No. 14 078 208-02 dated 5-5-89 in the amount of \$10,000, payable to Terry J. Harper.
- (d) Check No. 303 drawn on Ayala's Georgia Federal Bank Account No. 14 078 208-02 dated 4-25-89 in the amount of \$10,000, payable to Terry J. Harper.
- (e) Check No. 147 drawn on Ayala's Robinson-Humphrey/American Express Financial Management Account dated 7-12-88 in the amount of \$850.00 payable to Terry J. Harper.
- (f) Check No. 116 drawn on Ayala's Robinson-Humphrey/American Express Financial Management Account dated 11-25-87 in the amount of \$12,000 payable to Terry J. Harper.

- (g) Charges on Ayala's Amex Gold Card No. 3713599221-81004 dated 7-25-88 for airline tickets for Terry Harper and D. Richardson in the amount of \$560.00.
- 2) As against James M. Tigner, Jr. for the following item:
 - (a) Official bank check issued by The C&S National Bank on February 3, 1988 in the amount of \$150,000.00 purchased by James Tigner, payable to Robinson-Humphrey and Terry Harper, which was deposited in Harper's Robinson-Humphrey account No. 411 23400- 16-708 on February 4, 1988.
- 3) As against Eugene Daniel for the following item:
 - (a) The account journal of \$40,000.00 dated 11/16/89 from the Robinson-Humphrey account no. 411-43129 to Harper's Robinson-Humphrey account no. 411-23409.

Upon Respondents' receipt of written demand for payment from Harper with respect to these specifically identified individuals (Ayala, Tigner and Daniel) and items recited above to which this indemnity relates, Respondents will, at their election, either pay the amount demanded directly to the third-party or defend Claimant Terry Joe Harper against the claim to which the demand relates, bearing all costs and expenses including all attorneys fees related to such defense. Depending upon their election, Respondents agree to promptly: (1) pay or otherwise discharge any final judgment entered with respect to such claim; (2) fund any settlement disposing of such claim, or (3) take any other action reasonably necessary to facilitate the final disposition

of the claim. Respondents reserve the right to select counsel of their choice should they defend any such claims. Claimant agrees to reasonably cooperate with the defense of any such action, and Respondents agree to pay Claimant his out-of-pocket expenses associated with the defense.

The express intent and sole purpose of this Agreement is to credit Respondents for monies had and received by Harper from third-parties Ayala, Tigner and Daniel as an offset to monies claimed by Harper in this arbitration. To the extent the offset is not permitted or awarded by the Panel to the above-captioned arbitration, this Agreement shall be and is null and void.

This Agreement shall be binding upon Respondents Shearson Lehman Brothers, Inc., The Robinson-Humphrey Company, Inc., William L. Effinger, III, their successors, heirs and assigns, and shall inure to the benefit of Terry Joe Harper and his heirs.

This 6th day of February, 1992.

RESPECTFULLY SUBMITTED,

PETERSON DILLARD YOUNG SELF &
ASSELIN

BY: 

Peter J. Anderson
Bar #017837
Attorney for Respondents
Shearson Lehman Brothers,
Inc., The Robinson-Humphrey
Company, Inc., and William
L. Effinger, III.

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