

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Lorenzo & Sarah Franza

vs.

NASD #91-00593

Name of Respondents

Shearson Lehman Hutton, Inc.
Richard T. Hensel,
Gene Williams, Jr.,
Wall Street Pacific

REPRESENTATION

For Claimants: Charles Cummins, Esq., San Jose, California

For Respondents (Shearson Lehman Hutton and Richard Hensel): Philip McLeod, Esq. and Robert Gonsler, Esq., of Keesal, Young & Logan, San Francisco, California.

For Respondents (Wall Street Pacific [WSP] and Gene William [William]): Donald Fields, Jr., Esq. of Chickering & Gregory, San Francisco, California.

CASE INFORMATION

Statement of Claim filed: February 25, 1991.

First Amended Claim filed: August 24, 1992.

Claimants Submission Agreement signed: February 4, 1991

Statement of Answer filed by Respondents (Shearson & Hensel):	July 12, 1991
(WSP and William):	July 14, 1992

Amended Answer of Statement of Claim: August 14, 1992

Respondents' Submission Agreements signed on:

Shearson Lehman Hutton: July 22, 1991

Richard Hensel: } Did not file Submission Agreements but did file an Answer,
WSP & William: } submitted to jurisdiction and appeared at the arbitration and are
subject to National Association of Securities Dealers, Inc. (NASD)
jurisdiction in accordance with Section 12 of the NASD Code of
Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions:	December 8, 1992	(two sessions)
	December 9, 1992	(two sessions)
	December 10, 1992	(two sessions)
	December 11, 1992	(two sessions)
	January 25, 1993	(two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged: 1) Common Law Fraud and Deceit; 2) Common Law Negligent Misrepresentation and Omission; 3) Common Law Breach of Fiduciary Duties; 4) Negligence; 5) Violation of California Corporations Code Section 25401; 6) Violation of Section 12(2) of the 1933 Securities Act; Misrepresentations in the Offer and Sale of Security; &) Violation of Section 17(A) of the 1933 Securities Act; Device or Scheme to Defraud; 8) Violation of Section 10b-5 of the Securities and Exchange Act of 1934 and Rule 10b-5; Employment of Devices, Schemes or Artifices to Defraud and Untrue Statements of, and Omission to State, Material Facts; 9) Violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(3) - Engaging in an Act, Practice or Course of Business Operating as a Fraud or Deceit; 10) Unjust Enrichment; 11) Intentional Inflection of Emotional Distress; 12) Negligent Inflection of Emotional Distress; and 13) Accounting and Declaratory Relief - Wall Street Pacific, Inc. in the trading of options and other securities in claimants' account.

On or about August 12, 1988, claimants opened a joint account at respondent WALL STREET PACIFIC (WSP) with respondent HENSEL as their account executive. They contributed \$110,000.00 in cash, and told WSP and HENSEL it was to be invested in secure, unspeculative investments consisting approximately 60% to 70% in mutual funds and bonds and

the balance in stocks to increase their capital at a conservative rate with little risk to principal. Based on HENSEL's advice, claimants invested in options which they believed to be conservative investments.

In December 1988 HENSEL transferred from WSP to SHEARSON LEHMAN HUTTON (SLH) and misrepresented the amount of the transfer of claimants' account as \$106,757.63, when in fact it was approximately \$86,037.50; claimants did not learn of the misrepresentation until May 23, 1992. Claimants' investment objectives were the same at SHEARSON and LORENZO FRANZA opened a personal account with those objectives. Claimants were unsophisticated investors who relied on respondents in developing their investment portfolio.

Beginning on or about the dates claimants' accounts were opened, all respondents made misrepresentations 1) as to suitability 2) the market value of claimants' accounts, 3) violations of margin requirements. Respondents also churned claimants' accounts, made unauthorized transactions, and failed to disclose whether SHEARSON and HENSEL were acting as principal, agent, underwriter, or some other capacity. Respondents were guilty of fraud in the inducement, giving improper tax advice, self dealing and failure to follow and implement their own procedure and policies.

Respondents SHEARSON and HENSEL denied generally and specifically each and every allegation of the Amended Statement of Claim and denied that claimants were damaged in any sum. They alleged: Claimants were intelligent sophisticated investors with annual income of \$85,000.00 and estimated net worth of \$240,000.00, and had five years investment experience in trading securities of December 1988.

Upon opening their account with SHEARSON, claimants completed an option suitability form which indicated their anticipated option activities, including "purchase calls," "purchase puts," "self-covered calls," and "spreads." Claimants gave discretionary authorization to HENSEL to effectuate trades in their accounts, as they were frequently unavailable at work and traveled often.

LORENZO FRANZA visited the SHEARSON office two or three times per month to review each account transaction. No complaints were made about the account until January 1991, 13 months after they were opened. HENSEL, on numerous occasions, explained to Mr. Franza the inherent risks in trading options. In addition, claimants ratified the handling of their accounts and should be estopped from asserting their claims. They traded commodities and continued to trade options even after learning of their losses. Respondents WSP and WILLIAM denied generally and specifically each and every substantive allegation contained in the Statement of Claim and that claimants were damaged in any sum. Respondents alleged: Claimants were intelligent, sophisticated investors who opened accounts with WSP Financial Resources, INC., (WSPFR) a subsidiary of WSP; they completed and signed (by LORENZO FRANZA) an option agreement form which states: "I have received from my broker the most recent Options Risk Guideline Document. I have read and understand the information contained in this document."

Claimants actively traded options throughout the time they maintained their account at WSPFR and made no complaints until May 1992 -- 30 months after opening the accounts. LORENZO FRANZA visited the WSPFR office frequently to review each transaction and investment. The majority of the claimants' transactions were unsolicited and the suitability rule is therefore inapplicable.

Claimants ratified the handling of their accounts and should be estopped from recovery. They received confirmation slips and monthly statements affecting each and every transaction. LORENZO FRANZA was constantly on the telephone with HENSEL discussing claimants' accounts, the status of their options positions and developments in the market.

RELIEF REQUESTED

A. For damages from Respondents SHEARSON and HENSEL under the First through Eleventh Causes of Action according to proof in the sum of \$145,322.70 or more on the SHEARSON Joint Account and \$9,656.94 or more on the Lorenzo Franza SHEARSON account, plus additional damages to compensate Claimants for their time and effort in dealing with Respondents and pursuing this claim, plus interest at the legal rate from and after June 1, 1992;

B. For damages from Respondents WALL STREET PACIFIC, GENE WILLIAMS, and HENSEL under the First through Eleventh Causes of Action according to proof in the amount of \$57,694.03 or more, plus additional damages to compensate Claimants for their time and effort in dealing with Respondents and pursuing this claim, plus interest at the legal rate of 10% per annum from and after June 1, 1992;

C. For an award determining the status of the investment in the Fourteenth Cause of Action and an award of monetary damages or other relief as may be appropriate;

D. For a determination that SHEARSON is liable for the damages suffered by Claimants in the WALL STREET PACIFIC Account by reason of HENSEL's continued misrepresentations as the employee and representative of SHEARSON regarding that WALL STREET PACIFIC account and values and securities transferred to SHEARSON; and otherwise;

E. For damages within the jurisdiction of this Arbitration according to proof under the Twelfth and Thirteenth Causes of Action;

F. For reasonable expenses incurred in investigating, filing and prosecuting this action including attorneys' fees and experts' fees;

G. For punitive and exemplary damages as hereinabove alleged;

H. For costs of suit and arbitration; and

1. For such other and further relief as the arbitrators may deem proper.

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.

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 against respondents Wall Street Pacific and Gene Williams are dismissed;
2. Respondents SHEARSON and HENSEL are jointly and severally liable for and shall pay the claimants for \$96,036.00 representing A) \$81,306.00 on the joint account (\$62,307 principal and \$18,999.00 interest); and B) \$14,730.00 on the individual account (\$10,719.00 principal and \$4,011.00 interest);
3. Said respondents are liable under the second, third, fourth, fifth, sixth, seventh, ninth, tenth and eleventh causes of action on the First Amended Statement of Claim and not liable on the remaining causes of action;
4. The claim for punitive damages is dismissed; and
5. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$500.00 hearing session deposit previously deposited by the claimant. Forum fees assessed against: Respondent SHEARSON and HENSEL, jointly and severally, the amount of \$5,000.00 as calculated as follows \$500.00 hearing deposit times 10 hearing sessions equalling \$5,000.00.

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

ARBITRATION PANEL

Name

Public/Industry

Robert K. Byers
Adrienne E. Miller, Esq.
Rudy E. Thorwith

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

DATE SERVED: 02/07/93

Robert K. Byers

Adrienne E. Miller, Esq.
Adrienne E. Miller, Esq.

Rudy E. Thorwith

Date of Decision: Feb. 1, 1993