

N.A.S.D. AWARD

CR 1 1992

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bernadette Haas  
Bernadette Haas IRA  
Carl A. Haas IRA  
Carl A. Haas Enterprises Defined Benefit Plan  
Team Haas U.S.A. Ltd.

No. 91-00937

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

For Claimants: Frank Emmons, Esq. of Schwartz & Freeman

For Respondents: Alan Charles Valente, Esq. and Robert Bramnik,  
Esq. of Altheimer & Gray

CASE INFORMATION

Statement of Claim filed: March 21, 1991.

Claimant's Submission Agreement signed on: March 8, 1991.

Statement of Answer filed by Respondent, Shearson Lehman  
Brothers, Inc., on: May 24, 1991.

Respondent, Shearson Lehman Brothers, Inc.'s Submission  
Agreement signed on: April 3, 1991.

HEARING INFORMATION

Pre-Hearing conference: January 20, 1992, one session.

Hearing dates: January 23, 1992, one session.  
February 24, 1992, two sessions.  
February 25, 1992, two sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimants alleged that Respondent Shearson Lehman Brothers, Inc. ("Shearson") failed to adhere to the investment objective of Claimants, traded beyond the investment objective, provided erroneous information concerning the security of Claimants' investment in the Federated Department Store Euro Bonds ("Bonds"), and failed to diversify investments in Claimants' accounts. Claimants also alleged negligence and fraud arising out of the recommendation and purchase of the Bonds by Patrick Palella, a registered representative of Shearson. Claimants were never informed between October, 1988 and August of 1989, that the Bonds did not meet their investment objectives. In November of 1989, Claimants contracted Patrick Palella at Shearson and were assured by him that the financial problems facing Federated Department Stores would have no effect on the Bonds. Federated Department Stores filed for bankruptcy, and Claimants have not liquidated the Bonds. It was alleged that if worth anything at all, the Bonds are worth a fraction of their value.

In its Statement of Answer and Third Party Claim Shearson denied any liability to Claimants. Shearson alleged that all trades had been ratified and confirmed by Claimants. Shearson went on to state that although Claimants were seeking recovery from Shearson for Patrick Palella's alleged misrepresentations, they continue to do business with Mr. Palella at his current firm. Lastly, Respondent asserted its Third Party Claim against Neil Richter, Claimants' manager, for indemnification because Mr. Richter allegedly authorized the Federated Purchase.

Mr. Richter has not submitted himself to the jurisdiction of the NASD.

### RELIEF REQUESTED

Claimants requested payment from Shearson in the amount of \$305,000 plus uncovered premiums paid on the Bonds and interest at the quoted yield on each of the Bonds from March 1, 1989 to the present together with their costs and attorney's fees.

Shearson requested that Claimants' Statement of Claim be denied in its entirety.

### OTHER ISSUES CONSIDERED & DECIDED

At the hearing on January 23, 1992, Shearson requested a continuance due to Claimants' alleged failure to comply with document requests it had prepounded, and also Claimants' alleged failure to comply with the order of the chairman at a pre-hearing

conference held on January 21, 1992. Shearson alleged the inability to proceed with its case without the documents previously requested. Claimants strenuously objected to the continuance request.

The parties, during the panel's deliberations, came to a consensus that the case would be postponed until January 30th, 1992, and, if needed, February 3, 1992. The parties further agreed that discovery and exhibits would be stipulated to by both parties. The panel concurred with the parties, and the hearing was reset to January 30, 1992 at 8:30 a.m..

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 original remains on file with the NASD.

#### AWARD

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

1. Claimants', Bernadette Haas, Bernadette Haas IRA, Carl A. Haas Enterprises Defined Benefit Plan, and Team Haas U.S.A., Ltd., claims are hereby denied and dismissed; and
2. Claimants shall bear all hearing fees of this arbitration as set forth more fully below.

#### FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

one pre-hearing conference session X \$ 750.00 = \$ 750.00

five hearing sessions X \$ 750.00 = \$3,750.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimants.

Claimants, Bernadette Haas, Bernadette Haas IRA, Carl A. Haas IRA, Carl A. Haas Enterprises Defined Benefit Plan, Team Haas U.S.A. Ltd., are liable for, and shall pay to the NASD the sum of \$3,000.00 which constitutes the remaining hearing session fees

for this arbitration.

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

Dated:

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Richard L. Merrick  
Presiding Chair

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Stephen W. Balek  
Public Arbitrator

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*Kathleen W. Arpaia*  
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Kathleen W. Arpaia  
Industry Arbitrator

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*March 12, 1992*  
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for this arbitration.

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

Dated:

March 21, 1992

Richard L. Merrick

Richard L. Merrick  
Presiding Chair

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Stephen W. Balek  
Public Arbitrator

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Kathleen W. Arpaia  
Industry Arbitrator

for this arbitration.

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

Dated:

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Richard L. Merrick  
Presiding Chair

.....3/12/92.....

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*Stephen W. Balek*  
Stephen W. Balek  
Public Arbitrator

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Kathleen W. Arpaia  
Industry Arbitrator