

## 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 BetweenName of Claimants:

James J. Clauss  
Clauss Agency, Inc.

91-01033

Name of Respondents:

Shearson Lehman Brothers, Inc.  
Alan Gladstone

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REPRESENTATION

For Claimants: No attorney of record.

For Respondents: Daniel T. Fitch, Esq. of Stradley, Ronon, Stevens &amp; Young.

CASE INFORMATION

Claimants filed a Statement of Claim on March 11, 1991 and executed a Submission Agreement on March 15, 1991.

Respondents filed a joint Statement of Answer on May 24, 1991. Respondent Shearson Lehman Brothers, Inc. ("Shearson") executed a Submission Agreement on April 24, 1991. Respondent Alan Gladstone ("Gladstone") executed a Submission Agreement on May 21, 1991.

HEARING INFORMATION

Pre-Hearing Conference: None.

Hearing Date/Sessions: November 4, 1991 - two sessions.

Hearing Location: NASD Offices located in Philadelphia, Pennsylvania.

CASE SUMMARY

Claimant James Clauss ("Clauss") alleged that in May of 1987 Respondent Gladstone induced him to sell his shares of Buckeye Partners, L.P. and to purchase 2500 shares of Permian Partners, L.P. ("Permian") in his own name, and 3000 shares of Permian in the name of Claimant Clauss Agency, Inc., which

he owns exclusively. He further alleged that the inducement for purchasing Permian was the guaranteed dividend for five years. However, he received dividends for only three years and further alleged that Respondent Shearson made misrepresentations through its broker, Respondent Gladstone.

Respondents maintained that Permian paid its full dividend during 1987, 1988, and 1989. However, in 1990, National Intergrup unexpectedly purchased Permian's stock in a buy out. Respondents maintained that as a result of the buy out, Claimants were required to redeem their shares at the buy out price of \$3.56 per share, and consequently lost their rights to receive further dividend payments. Respondents maintained that Claimants' losses were the result of a sudden and unforeseen event outside of their control, and the recommendation to purchase Permian was consistent with Claimants' investment objectives.

#### RELIEF REQUESTED

Claimants requested damages of \$29,906.25 for losses in connection with the purchase and subsequent sale of Permian stock. Claimants also requested punitive damages in an unspecified amount. At the hearing, Claimants requested additional damages of \$8,172.50 for dividends that they had been guaranteed on Permian stock, but which they did not receive due to the buy out.

Respondents requested dismissal of all claims and costs to be assessed against the Claimants.

#### 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 original remains on file with the NASD.

#### AWARD

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

1. That Respondents are liable jointly and severally and shall pay to the Claimants the sum of One Hundred Dollars and No Cents (\$100.00) as compensatory damages;
2. That Respondents are liable jointly and severally and shall pay to the Claimants the sum of One Thousand Dollars and No Cents

(\$1,000.00) as punitive damages;

3. That each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$300.00 are assessed against Respondent Gladstone. This amount was computed as follows:

2 sessions x \$300.00/session - \$300.00 hearing session deposit  
previously paid by Claimant = \$300.00

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

The NASD will retain the Claimant's \$120.00 non refundable claim filing fee.

Concurring Arbitrator's Signature:



Guillermo L. Bosch, Esq.  
Public Arbitrator/Chairperson

Date of Decision: January 3, 1992