

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)

Stanley Diamond

91-01402

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
Andrew Sunkin

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**REPRESENTATION**

For Claimant Stanley Diamond: Mark F. Heinze, Esq. of Monaghan Rem & Zeller, P.C., Hackensack, New Jersey.

For Respondents Shearson Lehman Brothers, Inc. and Andrew Sunkin: Arthur Schupbach of Schupbach Williams & Pavone, Garden City, New York.

**CASE INFORMATION**

Statement of Claim filed: April 18, 1991.

Claimant's Submission Agreement signed on: October 13, 1993.

Amended Statement of Claim filed on May 7, 1993.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Andrew Sunkin on: March 25, 1992

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: June 17, 1992.

Respondent Andrew Sunkin's Submission Agreement signed on: June 17, 1992.

Joint Amended Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Andrew Sunkin on: May 18, 1992

### HEARING INFORMATION

Hearing Dates/Sessions:      October 13, 1993 / Two Sessions  
   October 14, 1993 / Two Sessions

Hearing Location: NASD offices located in New York, New York.

### CASE SUMMARY

Claimant alleged that he was unfamiliar with and unsophisticated in the workings of the securities markets and throughout his life. Claimant maintained a conservative, low risk investment philosophy. Claimant further alleged that in September 1987, consistent with this philosophy, he opened an account with Respondent Shearson Lehman Brothers, Inc. through a representative V. Fiorentino, to hold shares in the "Nuveen N.Y. Municipal Value Fund", a conservative tax free mutual fund. Claimant further alleged that he informed Fiorentino that he desired to only pursue conservative investments. Claimant alleged that once he opened the Nuveen Fund, Respondent Shearson Lehman Brothers, Inc. without his consent and outside the terms of the customer agreement he signed, made his phone number available to stock brokers. Claimant contended that Respondent Shearson Lehman Brothers, Inc. authorized Respondent Sunkin to make repeated high pressure solicitations to him to encourage and convince him to invest his money in securities known by Respondent Shearson Lehman Brothers, Inc. to be highly volatile and risky, and thus inconsistent with Claimant's disclosed conservative, low-risk investment objectives. Claimant alleged that in order to appeal to his conservative investment philosophy, Respondent Andrew Sunkin assured Claimant that the stock market was safe and showing a rising trend. Claimant further alleged that Respondent Andrew Sunkin relentlessly solicited him and made various assurances to convince him to open a stock trading account whereby in February 1988 Claimant deposited over \$100,000.00 with Respondent Andrew Sunkin. Claimant contended that these funds were used to purchase N.Y. Job Development Authority tax free bonds, a conservative investment consistent with Claimant's stated investment goals. Claimant further alleged that once Respondent Andrew Sunkin received these funds in his control he set out to convince Claimant to move his funds into high volume, high margin, high risk stock trading, whereby, he churned Claimant's account and violated Claimant's trading instructions. Claimant alleged that Respondent breached the Agreement they signed, were negligent, malicious and because of their actions Claimant lost funds in his account.

Respondents maintained that when Claimant opened his account in 1988 he told Respondent Andrew Sunkin that he was interest in stock investments, but wished to defer consideration of stocks until such time as their relationship became more fully established. Respondents maintained that it was not until almost eight months after opening the account that Claimant made his first stock purchase of which he ultimately realized a profit of over \$7,000.00. Respondents further maintained that the transactions in the account were discussed by Respondent Sunkin and Claimant as to contemplated transactions and Respondent Sunkin never declined to follow the instructions ultimately given by Claimant. Respondents further maintained that Respondent Sunkin never provided any "assurances" to Claimant. Respondents maintained that all the trades in the account were suitable in light of Claimant's expressed investment objective and financial condition. Respondents maintained that Claimant received confirmation of all trades as well as monthly statements showing the positions in his account and Claimant was well aware of the activity in his account at all times.

#### **RELIEF REQUESTED**

Claimant requested \$74,725.60 in compensatory damage plus punitive damages, attorneys' fees, costs, pre-award interest.

Respondents requested all claims be dismissed.

#### **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. Respondent Andrew Sunkin be and hereby is liable and shall pay Claimant Stanley Diamond the sum of \$13,012.50 inclusive of interest, based on the suitability claim.
2. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay Claimant the sum of \$39,037.50 inclusive of interest based on the suitability and lack of supervision claims.
3. Claimants claims for churning, unauthorized tradings, punitive damages and all other claims are dismissed in their entirety.
4. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay Claimant the sum of \$650.00 to represent filing fees.

5. Each party shall bear their own costs including attorneys' fees.

**FORUM FEES**

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

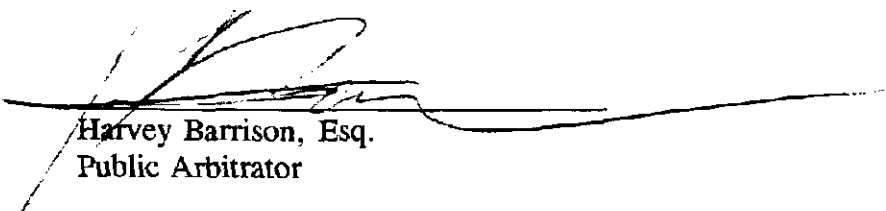
4 sessions x \$500.00 = \$2,000.00 less \$500.00 hearing session deposit = \$1,500.00 net due.

Forum Fees Assessed Against:

Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay the NASD the sum of \$1,500.00 to represent forum fees.

The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously paid by Claimant.

**ARBITRATORS' SIGNATURE**



Harvey Barrison, Esq.  
Public Arbitrator

\_\_\_\_\_  
Leo Cooperman, CPA  
Public Arbitrator

\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Industry Arbitrator

Date of Decision: November 18, 1993

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 3<sup>rd</sup> day of November, 1993, before me personally appeared **Harvey Barrison, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



**BILL V. KAKOULLIS**  
Notary Public, State of New York  
No. 41-4783568  
Qualified in Queens County  
Commission Expires October 31, 1995

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **Leo Cooperman, CPA** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **John J. Witkowski, Jr., Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

5. Each party shall bear their own costs including attorneys' fees.

**FORUM FEES**

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deposit = \$1,500.00 net due.

Forum Fees Assessed Against:

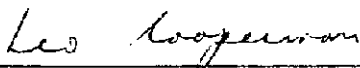
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The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously paid by Claimant.

**ARBITRATORS' SIGNATURE**

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Harvey Barrison, Esq.  
Public Arbitrator

  
\_\_\_\_\_  
Leo Cooperman, CPA  
Public Arbitrator

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John J. Witkowski, Jr., Esq.  
Industry Arbitrator

Date of Decision: November 18, 1993

STATE OF:

SS:

COUNTY OF:

On this       day of       , 1993, before me personally appeared **Harvey Barrison, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *New York*

SS:

COUNTY OF: *Queens*

On this *9th* day of *November* , 1993, before me personally appeared **Leo Cooperman, CPA** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Rose J. Farrell*  
ROSE J. FARRELL  
NOTARY PUBLIC, State of New York  
No. 41-4571705  
Qualified in Queens County  
Commission Expires April 21, 1994

STATE OF:

SS:

COUNTY OF:

On this       day of       , 1993, before me personally appeared **John J. Witkowski, Jr., Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

5. Each party shall bear their own costs including attorneys' fees.

**FORUM FEES**

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

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deposit = \$1,500.00 net due.

Forum Fees Assessed Against:

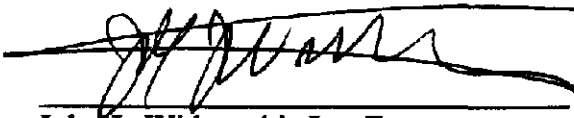
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The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously paid by Claimant.

**ARBITRATORS' SIGNATURE**

\_\_\_\_\_  
Harvey Barrison, Esq.  
Public Arbitrator

\_\_\_\_\_  
Leo Cooperman, CPA  
Public Arbitrator

  
\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Industry Arbitrator

Date of Decision: November 18, 1993



STATE OF:

SS:

COUNTY OF:

On this       day of       , 1993, before me personally appeared **Harvey Barrison, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this       day of       , 1993, before me personally appeared **Leo Cooperman, CPA** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *New York*

COUNTY OF: *Richmond*

SS:

On this *11<sup>th</sup>* day of *NOVEMBER*, 1993, before me personally appeared **John J. Witkowski, Jr., Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Thomas P. Donnelly*

THOMAS P. DONNELLY  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 43-6068750  
QUALIFIED IN RICHMOND COUNTY  
COMMISSION EXPIRES *9.28.96*