

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

---

In the Matter of the Arbitration Between

Name of Claimant(s)

Alexandra C. Carmel

91-02365

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc  
Shearson Lehman Brothers, Inc.  
Gail Konstantin

---

REPRESENTATION

For Claimant: Katherine Nathan, Esq. of the law firm of Brandeis, Bernstein & Wasserman.

For Respondent: John Jenkins, Esq.

CASE INFORMATION

Statement of Claim filed: August 1, 1991.

Claimant's Submission Agreement signed on: July 23, 1991.

Joint Statement of Answer filed by Respondents on: October 7, 1991.

Respondent Gail Konstantin's Submission Agreement signed on: October 7, 1991.

Respondent Shearson Lehman Hutton Inc.'s Submission Agreement signed on: October 2, 1991.

HEARING INFORMATION

Pre Hearing Conference: March 23, 1992

Hearing Dates/Sessions:                      December 21, 1992, 1 Session.  
   December 18, 1992, 2 Sessions.  
   December 15, 1992, 2 Sessions.  
   December 14, 1992, 2 Sessions.

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

### CASE SUMMARY

Claimant alleged that Respondent Konstantin recommended and pursued an aggressive pattern of trading and investments in highly speculative corporate bonds and limited partnerships which placed Claimant's funds at considerable risk and in order to implement these investments, continued to sell off Claimant's holdings in conservative investments and actively traded on margin without having explained what a margin account was or what trading on margin meant. Claimant further alleged the trading in Claimant's accounts was excessive and speculative and involved numerous short term transactions and excessively large positions and the conduct of Respondents constituted a breach of their fiduciary responsibilities to Claimant. Claimant further alleged Respondent Gail Konstantin made misrepresentations to Claimant; the transactions entered into for Claimant's accounts were highly unsuitable; Respondents failed to properly know their customer; the conduct by Respondents constituted churning and Respondent Shearson Lehman Hutton, Inc. is liable for the actions of Respondent Gail Konstantin independently and under the doctrine of respondeat superior.

Respondents deny Claimant's allegations and deny that they are liable to Claimant for any monetary losses whatsoever. Respondents further maintained, while Claimant's accounts were handled by Konstantin at Shearson Lehman Hutton, Inc., Claimant continued and increased her spending habits, causing a large debit balance in her Shearson Lehman Hutton, Inc. investment account and intensifying her demand for investments with high yields. Respondents further maintained Gail Konstantin discussed all investments with Claimant prior to execution, and she understood the risks associated with and desired all investments entered into her Shearson Lehman Hutton, Inc. accounts by Gail Konstantin. Claimant was suitable for these investments and at no time did Claimant lodge a complaint about any transaction which she entered into at Shearson Lehman Hutton, Inc. while Gail Konstantin handled her accounts. Respondents further maintained any losses arising out of Claimant's Shearson Lehman Hutton, Inc. accounts resulted solely from adverse market fluctuation, and such losses are not due to any impropriety on the part of Shearson Lehman Hutton, Inc. or Gail Konstantin. Respondents further maintained they discharged their responsibilities in a professional and ethical manner, and all of their actions were well within the parameters of accepted brokerage procedure and all exchange and governmental regulations. Thus, Claimant is not entitled to punitive damages.

### RELIEF REQUESTED

Claimant requested damages of \$500,000.00 together with interest from February 1984, punitive damages, reasonable attorneys' fees, and such further relief as the arbitrators deem just and appropriate.

Respondents requested the Claimant's Statement of Claim be dismissed in its entirety and that the costs and disbursements associated with this matter be assessed against the Claimant.

### 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. During the first hearing session, the arbitration panel was informed that the parties had entered into a stipulation that the losses involved in the Radisson limited partnership would not be included as issues in the arbitration.
2. The Claimant's claim be and hereby is denied in its entirety.
3. The Claimant's claim for punitive damages is denied.
4. Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

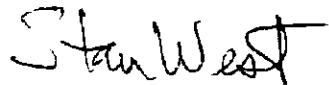
7 sessions + 1 pre-hearing conference = \$5,250.00 + \$300.00 =  
\$5,550.00 minus Claimant's hearing session deposit (\$750.00) =  
\$4,800.00 due.

The Respondent Shearson Lehman Hutton, Inc be and hereby is liable and shall pay to the NASD the sum of \$4,800.00 to represent forum fees.

The NASD shall retain the \$200.00 claim filing fee previously deposited by the Claimant.

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

ARBITRATOR SIGNATURES



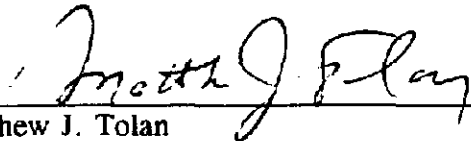
---

Stan West  
Public Arbitrator



---

Edward T. Hill  
Public Arbitrator



---

Matthew J. Tolan  
Industry Arbitrator

Decision Dated: February 8, 1993