

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Harold Nelson

vs.

91-02435

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
Ken Small

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REPRESENTATION

For Claimant: Mitchell C. Green, Esq., Los Angeles, California.

For Respondents: E. Scott Douglas, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed: August 7, 1991.

Claimant's Submission Agreement signed on: June 18, 1991

Joint Statement of Answer and Counterclaim filed by Respondents on: March 26, 1992

Respondent Shearson's Submission Agreement signed on: September 21, 1991

Respondent Small's Submission Agreement signed on: None submitted.

HEARING INFORMATION

Hearing Date/Sessions: April 3, 1992 (2 sessions)

Hearing Location: Los Angeles, California

### CASE SUMMARY

Claimant alleged fraud, misrepresentation, breach of fiduciary duty, unsuitability and lack of supervision with respect to investments in the common stock of L.A. Gear and Businessland.

Respondents denied Claimant's allegations, and asserted that all claims of misrepresentation are time-barred, that Claimant authorized all transactions and exercised control over his account at all times, and that Claimant is a member of the class action suit against Businessland known as In re. Businessland Sec. Litig., Case No. C-90-20476-RFP, and that the claims in the class action arose out of the same investments and transactions as those raised in this arbitration proceeding.

Respondents asserted a counter-claim for the debit balance in Claimant's account.

### RELIEF REQUESTED

Claimant requested damages of approximately \$40,000, plus interest, punitive damages, relief from liability for the debit balance, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims and an award on the counterclaim of \$18,144 plus interest, costs of arbitration and attorney's fees.

### 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.

At hearing, Respondents moved to dismiss, or in the alternative, to stay the proceedings because of Claimant's status as a member of the class action suit In re. Businessland Sec. Litig., Case No. C-90-20476-RFP, and therefore as a potential recipient of the settlement funds to be distributed to cover the same losses as claimed in this arbitration claim. The motion was denied.

### 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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$19,388.71 plus simple interest at 8% per annum from August 13, 1990 until paid. Payment shall be made on or before the 30th day following receipt of the assignment designated in paragraph 3 of this award.

2. The claim for punitive damages is dismissed.
3. Claimant is to assign to Respondents all rights and interests in the class action known as In re. Businessland Sec. Litig., Case No. C-90-20476-RFP.
4. The counterclaim for the debit balance is dismissed.
5. The parties will each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$400 hearing session fee previously deposited by Claimant as an assessment of forum fees for 1 session. In addition, Respondents are jointly and severally assessed forum fees of \$400 for 1 session.

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

ARBITRATION PANEL

Public/Industry

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Signature

  
\_\_\_\_\_  
Aaron Fenton

DATE SERVED: 05/12/92

Date of Decision: \_\_\_\_\_