

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Joseph & Shirley Berkley :

Claimant :

vs. :

Shearson Lehman Brothers, Inc. :

Philip Engelson :

Respondents :

INDUSTRY

**CASE #91-02535
AWARD**

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 16, 1991, Claimants Joseph & Shirley Berkley, who appeared Pro Se, alleged that Respondents Shearson Lehman Brothers, Inc. and Philip Engelson recommended they invest in American First Limited Partnership, which was an unsuitable investment considering they were concerned with safety of principal and had explained that to Mr. Engelson. The Claimants further alleged that they never received a prospectus on the stock, which would have alerted them of the risk involved with this Limited Partnership.

Respondents, Shearson Lehman Brothers, Inc. and Philip Engelson, through its in-house counsel, William Hohauser, Esq., maintained that this investment was explained to the Claimants and that they were fully aware of what they were purchasing. Respondents further maintained that the Claimants sold the investment against Engelson's advice and that had they held onto the Limited Partnership, they would not have suffered a loss. Respondents also contend that they acted at all times in a professional and ethical manner and in accordance with all exchange and governmental regulations.

RELIEF REQUESTED

Claimants, Joseph & Shirley Berkley requested \$4,612.00 in actual damages.

Respondents, Shearson Lehman Brothers, Inc., and Philip Engelson requested the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Robert A. Kasky, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on August 13, 1991 and not by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson Lehman Brothers, Inc. and Philip Engelson are jointly and severally liable and shall pay to Claimants, Joseph & Shirley Berkley \$1,537.33 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, **ROBERT A. KASKY**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: May 22, 1992