

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Blain H. Marchand

91-02674

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

Claimant Blain H. Marchand ("Claimant") was represented by Howard B. D'Amico of the law firm of Kirkpatrick & Associates.

Respondent Shearson Lehman Brothers, Inc. ("Respondent") was represented by Christopher T. Litterio of the law firm Shapiro, Isreal & Weiner, P.C.

CASE INFORMATION

Statement of Claim filed on: August 26, 1991.

Claimant's Submission Agreement signed on: August 20, 1991.

Statement of Answer filed by Respondent on: December 1, 1991.

Respondent's Submission Agreement signed on: November 21, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 28, 1992, 2 sessions.
July 10, 1992, 2 sessions

Hearing Location: NASD, Inc., Boston, MA.

CASE SUMMARY

Claimant alleged that on November 2, 1989 he purchased 12,000 Class A warrants of Transgenic Sciences, Inc. ("TSI"). Claimant alleged that each Class A warrant entitled the holder to purchase one share of TSI common stock and two Class B warrants for a total price of \$2.00 and that the Class B warrants entitled the holder to purchase one share of TSI common stock at a price of \$3.35. Claimant alleged that on April 27, 1990 TSI announced the Class A warrants would be redeemed if not exercised by May 29, 1990. Claimant alleged that he instructed Respondent to exercise all warrants.

Claimant alleged that he learned that Respondent failed to follow his instructions. Claimant alleged that Respondent failed to correct its mistake and that Respondent tried to cover its mistake by manufacturing a confirmation slip. Claimant alleged that he made numerous attempts to contact Respondent through its employees and have them correct the mistake. Claimant alleged that Respondent was either unable or unwilling to correct its error. Claimant further alleged that if not for the mistake of Respondent, that the Class B warrants would have been exercised by now. Claimant alleged that because Respondent deliberately attempted to deceive Claimant, he seeks punitive damages of well as compensatory damages.

Respondent denied any improper conduct on its behalf with respect to the handling of Claimant's account. Respondent maintained that Claimant never gave directions to his account executive to exercise his 12,000 TSI warrants. Respondent maintained that Claimant authorized the exercise of only 3,000 warrants. Respondent maintained that Claimant indicated he did not have the cash necessary to exercise the remaining 9,000 warrants. Respondent maintained that as of the redemption date, Claimant had not ordered the exercise of the remaining 9,000 warrants and Claimant's account was credited with the redemption price. Respondent maintained that after the redemption date, Claimant indicated he wished to exercise the remaining warrants, but he was advised that it was too late to exercise all the warrants, but that Respondent was able to credit Claimant for the exercise of an additional 6,000 warrants with another broker/dealer. Respondent maintained that as to the remaining 3,000 warrants, Claimant's loss is attributable to his own failure to instruct Respondent to exercise the warrants, and inability to pay for the exercise.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$26,100.00 and punitive damages in the amount of \$100,000.00 plus costs and reasonable attorneys' fees.

Respondent requested that Claimant's claim be dismissed.

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.

AWARD

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

1. That Respondent Shearson shall sell 9,000 shares of TSI common stock to Mr. Marchand for \$26,100.00.
2. That all other claims are denied in their entirety.
3. That the parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

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

That the parties are equally assessed forum fees so that Claimant is assessed forum fees in the amount of \$1500. Claimant, however, is entitled to offset this amount with his hearing session deposit of \$750 so that the amount due as forum fees from the Claimant is \$750. Respondent is assessed forum fees in the amount of \$1500.

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

Concurring Arbitrator's Signature:

Name

Public/Industry

Julien F. Begien
Julien F. Begien, Esq./Chairman

Public Arbitrator

Date of Decision: August 31st, 1992

1. That Respondent Shearson shall sell 9,000 shares of TSI common stock to Mr. Marchand for \$26,100.00.
2. That all other claims are denied in their entirety.
3. That the parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

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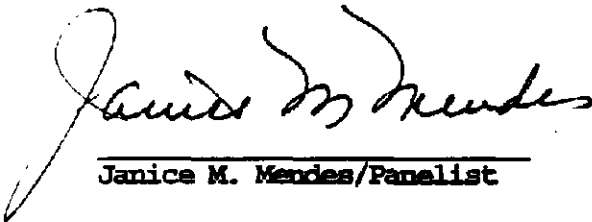
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Concurring Arbitrator's Signature:

Name

Public/Industry


Janice M. Mendes/Panelist

Public Arbitrator

Date of Decision: August 31st, 1992

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Concurring Arbitrator's Signature:

Name

Public/Industry


Joseph J. Slotnick/Panelist

Industry Arbitrator

Date of Decision: August 31, 1992