

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Eugene J. Hanavan

Claimant

vs.

Shearson Lehman Brothers, Inc.  
Larry Shatzkamer

## Respondents

CASE #91-02833  
AWARD

### CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 11, 1991, Claimant, Eugene J. Hanavan, who appeared Pro Se, alleged that on September 28, 1987 he instructed Respondent, Larry Shatzkamer, an Account Representative with Respondent, Shearson Lehman Brothers, Inc., to sell his 2,000 Cetus Corporation Warrants, expiration, 6/30/93, at which time, Claimant advised Respondent, Larry Shatzkamer that he was unable to locate the Cetus Warrant Certificates for the sold securities. Claimant further alleged that Respondent, Larry Shatzkamer informed him that he was required to present the Warrant Certificates to Respondent, Shearson Lehman Brothers, Inc. by October 22, 1987, in order for the trade to be executed. Claimant contended that on October 9, 1987, he contacted the Bank of Boston regarding the lost Warrants and took the necessary steps to have the Certificates replaced, at which time, it was Claimants understanding that the trade would not be executed without the warrants. Claimant further contended that on October 9, 1987, Respondents, Shearson Lehman Brothers, Inc. and Larry Shatzkamer executed the sale of his 2,000 Cetus Corporation Warrants and his account was credited in the amount of \$8,500.00 and subsequently, on October 29, 1987 Respondents repurchased the 2,000 Cetus Corporation Warrants, expiration 6/30/93, at a cost of \$12,000.00. Claimant asserted that Respondents sold the Cetus Corporation Warrants without his certificates and subsequently, repurchased them upon discovery of their error, therefore, Claimant is requesting the difference between the sale price and the repurchase price paid.

Respondents, Shearson Lehman Brothers, Inc. and Larry Shatzkamer, by and through their in-house counsel, Ann Parry, Esq., maintained that on or about September 28, 1987, Claimant, Eugene J.

Hanavan instructed Respondent, Larry Shatzkamer, the financial consultant to sell 2,000 Cetus One warrants which Claimant owned, at which time, Claimant failed to advise Respondent, Larry Shatzkamer that he was holding the warrants in his possession, not in his account. Respondents further maintained that on October 9, 1987, Respondent's, Shearson Lehman Brothers, Inc. Credit Department acknowledged Claimant's sale on September 28, 1987 and advised Claimant that if the sold securities were not delivered to Respondent, Shearson Lehman Brothers, Inc. possession by noon on October 22, 1987, Respondent, Shearson Lehman Brothers, Inc. was required by the regulatory authorities to buy the securities for Claimant's account at market value. Respondents contended that by letter dated October 9, 1987, Claimant advised Respondent, Larry Shatzkamer, for the first time, that he had lost the certificates for the warrants and that he had taken steps to obtain replacement certificates, at which time, Claimant requested Respondents refrain from buying the warrants for his account. Respondents further contended that they could not refrain from buying the warrants and on October 22, 1987 when Claimant failed to meet the deadline, Respondent, Shearson Lehman Brothers, Inc. purchased 2,000 Cetus One warrants for his account. Respondents asserted that Claimant received confirmation of the sale and a mailgram stating that "Shearson Lehman Brothers thanks you for your transaction of 9/28/87", thus, every communication that Claimant received from Respondents confirmed that the sale had taken place. Respondents further asserted that they should not be held liable for Claimant's own failure to present the certificates by the October 22, 1987 deadline, thus, any losses incurred by Claimant are attributable to his own actions.

#### RELIEF REQUESTED

Claimant, Eugene J. Hanavan requested \$3,494.59 in actual damages plus \$21.41 representing interest.

Respondents; Shearson Lehman Brothers, Inc. and Larry Shatzkamer requested the claim be dismissed and that costs and legal fees be awarded to Respondents.

#### AWARD

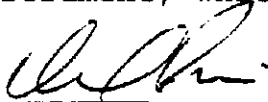
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David P. Polino, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 6, 1991, by the Respondent, Shearson Lehman Brothers, Inc. on October 14, 1991 and by the Respondent, Larry Shatzkamer on October 15, 1991.

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. The claims of Claimant, Eugene J. Hanavan against Respondents, Shearson Lehman Brothers, Inc. and Larry Shatzkamer are dismissed.
2. The parties shall bear their respective costs, including legal fees.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Eugene J. Hanavan shall be retained by the NASD, Inc.

AFFIRMATION

I, DAVID P. POLINO, 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: ~~XXXXXX~~ JUL 14 1992

STATE OF:

SS:

COUNTY OF:

On this 10 day of JULY 1992, before me personally appeared **DAVID P. POLINO** to me known and known before me to be the the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



KATHLEEN B. WINTER  
COMMISSIONER OF DEEDS  
In and for the City of Buffalo, N. Y.  
My Commission Expires Dec. 31, 1992