

## N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

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In the Matter of the Arbitration BetweenName of Claimant

Kay Willene Smith Blume

91-03106

Name of Respondents

Shearson Lehman Brothers, Inc.  
Steve Harvey

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REPRESENTATION

For Claimant: Elizabeth S. York, Esq.

For Respondent Shearson Lehman Brothers, Inc.: Charles Mills, Esq. of the law firm of Lord Day &amp; Lord, Barrett Smith.

Respondent Steve Harvey appeared pro se.

CASE INFORMATION

Statement of Claim filed: October 4, 1991.

Motion to Bar a Defense filed on: December 9, 1991.

Claimant's Submission Agreement signed on: August 9, 1991.

Opposition of Respondent Shearson Lehman Brothers, Inc. to Claimant's Motion to Bar a Defense filed on: February 12, 1990.

Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. on: December 2, 1991.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: December 6, 1991.

Respondent Steve Harvey's Submission Agreement signed on: March 2, 1992.

Statement of Answer filed by Respondent Steve Harvey on: March 3, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: August 13, 1992, 2 Sessions

August 14, 1992, 2 Sessions

Hearing Location: NASD offices located in Washington, D.C.

CASE SUMMARY

Claimant alleged that Respondents recommended and directed investments for Claimant's account that were completely unsuitable for her and contrary to her investment objectives and there was no reasonable basis for recommending that Claimant invest in a high risk security. Claimant further alleged Respondents ignored her request to diversify her holdings and thereby, failed to provide adequate safety precautions for Claimant's investment. Claimant further alleged she was a totally inappropriate candidate for the use of a margin account and did not understand the use of a margin account and the margin account was completely mismanaged by the Respondents. Claimant further alleged Respondents breached the fiduciary duty owed to her; failed to properly transfer her account according to her instructions and Respondent Shearson Lehman Brothers, Inc. failed to properly supervise her account.

Claimant asserted a Motion to Bar a Defense alleging Respondents' answers were not filed within the twenty day period required by Section 25(b) of the Code of Arbitration Procedure. In response to the Motion to Bar a Defense, Respondent Shearson Lehman Brothers, Inc. maintained the inconsequential delay in the filing of Respondent Shearson Lehman Brothers, Inc.'s answer has not prejudiced Claimant in any way.

Respondent Shearson Lehman Brothers, Inc. in answer to the Statement of Claim maintained Claimant was fully aware of the transactions and positions in her account at all times and never complained to Shearson's management until all of her positions were liquidated. Respondent Shearson Lehman Brothers, Inc. further maintained all transactions were authorized by Claimant and were suitable for her and all liquidations were authorized by the terms of the client agreement between Claimant and Respondent Shearson Lehman Brothers, Inc. Respondent Shearson Lehman Brothers, Inc. further maintained the decline in value of the securities in Claimant's account was due to market forces having nothing to do with the transfer of her account and in the absence of depositing further collateral or cash in her account, positions had to be liquidated to meet margin calls. Respondent Shearson Lehman Brothers, Inc. further maintained punitive damages are not allowable in arbitration and the award of punitive damages would be unwarranted and violated their right to due process and equal protection under law as guaranteed by the U. S. Constitution and state constitutions.

Respondent Steve Harvey maintained the Claimant possesses business sophistication and all potential investments were explained to the Claimant in detail. Respondent Steve Harvey further maintained he explained the mechanics of trading on margin to Claimant and she understood very well how a margin account functioned. Respondent Steve Harvey further maintained he did everything within his power to transfer Claimant's account to his new firm.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$15,138.75 plus interest, costs, expenses and disbursements including attorneys' fees, punitive damages in the sum of \$80,000.00 and such other relief as the arbitration panel deems just and proper.

Respondent Shearson Lehman Brothers, Inc. requested that the Statement of Claim be dismissed in all respects and that costs be assessed against Claimant.

Respondent Steve Harvey requested that the Statement of Claim be dismissed in all respects and that costs be assessed against 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. The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$3,570.62 interest specifically excluded.
2. The Respondent Steve Harvey be and hereby is liable and shall pay to the Claimant the sum of \$5,894.03, interest specifically excluded.
3. The Claimant's request for punitive damages is denied.
4. The Claimant's Motion to Bar a Defense is denied.
5. 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 Fees are assessed:

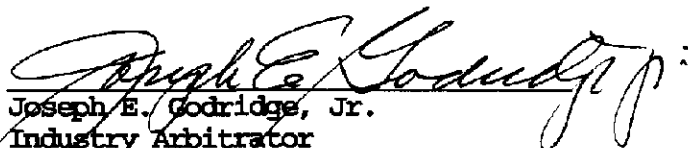
4 Sessions X \$500.00 = \$2,000.00 minus hearing session deposit of \$500.00 = net \$1,500.00 due.


The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the NASD the sum of \$1,500.00 to represent forum fees and shall pay to the Claimant the sum of \$650.00 to reimburse her for the claim filing fee and hearing session deposit paid.

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

ARBITRATOR SIGNATURES

  
Ira Siegler, Esq./Chairman  
Public Arbitrator

  
Joseph E. Godridge, Jr.  
Industry Arbitrator

  
Harold P. Green  
Public Arbitrator

Date of Decision: September 3, 1992