

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harris Herman
Carole Herman

NASD Arbitration
No. 92-00020

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
James Boston
Timothy McDonald
Gwendolyn Biggs

REPRESENTATION

For Claimants: Mitchell S. Ostwald, Esq., Seaman, Seaman & Ostwald,
Sacramento, California

For Respondents Shearson Lehman Brothers, Inc., James Boston and Timothy
McDonald: Cameron Stout, Esq., Keesal, Young & Logan, San Francisco,
California

For Respondent Gwendolyn Biggs: Joseph P. Russoniello, Esq., Cooley Godward
Castro Huddleson & Tatum, San Francisco, California

CASE INFORMATION

Statement of Claim filed: January 2, 1992

Claimants' Submission Agreement signed: November 22, 1991

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc.,
James Boston and Timothy McDonald: April 1, 1992

Statement of Answer filed by Respondent Gwendolyn Biggs: April 2, 1992

Respondents' Submission Agreements signed as follows:

Shearson Lehman Brothers, Inc.: February 20, 1992

James Boston: April 23, 1992

Timothy McDonald: April 7, 1992

Respondent Gwendolyn Biggs did not submit a Submission Agreement. However,
she appeared at the hearing and is subject to National Association of Securities
Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD
Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Dates/Sessions: December 21, 1992 (one session)
January 22, 1993 (one session)

Hearing Dates/Sessions: February 3, 1993 (two sessions)
February 4, 1993 (two sessions)
February 5, 1993 (two sessions)
February 8, 1993 (two sessions)
February 9, 1993 (two sessions)
February 10, 1993 (two sessions)
February 11, 1993 (two sessions)
April 26, 1993 (two sessions)
April 27, 1993 (two sessions)
April 28, 1993 (two sessions)
April 29, 1993 (two sessions)
April 30, 1993 (two sessions)
May 10, 1993 (two sessions)
May 11, 1993 (two sessions)
May 12, 1993 (two sessions)
May 14, 1993 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged that they suffered damages as a result of the fraudulent and deceitful practices perpetrated by Respondents relative to various investments including limited partnership interests. Claimants further alleged that they maintained their account with Respondents from 1984 to 1989 and that during that time, the Respondents conducted misleading, manipulative and fraudulent practices, including: 1) liquidating Claimants' Sterling Software stock in an unsuitable manner; 2) directing and affecting unsuitable trades in the Herman accounts; 3) directing investments for the purpose of providing continuous commissions through re-investment of income generated; 4) failed to follow the Hermans' investment objectives; 5) paid illegal kickbacks to Dave Mason, the Hermans' registered investment advisor; and 6) misrepresenting or omitting to state material facts or any facts to their client, the Hermans. Claimants alleged that these acts constitute breach of contract, breach of duty, violations of federal and state securities laws and violations of the rules and regulations of the NASD, as well as the various exchanges. Claimants asserted that Respondents are liable to the Hermans for all losses sustained as a result of the alleged misconduct practiced by Shearson's branch office manager, James Boston, and its account executives, Timothy McDonald and Gwendolyn Biggs. Claimants further alleged that Shearson is liable for its failure to reasonably supervise or prevent the fraudulent activities which occurred in the Hermans' accounts.

Respondents Shearson Lehman Brothers, Inc., James Boston and Timothy McDonald generally and specifically denied each and every substantive allegation contained in the Hermans' Statement of Claim, and denied that Claimants were damaged in any sum or sums whatsoever. The aforementioned Respondents further denied that they or any of their employees mishandled any transaction effectuated for the Shearson or E.F. Hutton & Company accounts of Claimants, and stated that at all times they handled those accounts in a prudent and professional manner. Respondents Shearson Lehman Brothers, Inc., James Boston and Timothy McDonald also asserted affirmative defenses.

Respondent Gwendolyn Biggs generally and specifically denied each and every substantive allegation contained in the Hermans' Statement of Claim, and denied further that Claimants were damaged in any sum or sums whatsoever. Ms. Biggs further denied that she mishandled any transaction effectuated for the Shearson and E.F. Hutton & Company accounts of Claimants, and stated that at all times she handled those accounts in a prudent and professional manner. Ms.

Biggs also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Actual damages of \$1,100,000.00. Such amount to be determined upon the proof of specific damages or under the alternative damages measure which would be presented before the arbitration panel;
2. Portfolio damages of \$840,000.00 or according to proof;
3. That Claimants be awarded all of Respondents' profits and commissions generated according to proof;
4. Punitive damages of \$10,000,000.00;
5. All of the Hermans' costs, expenses and disbursements, including reasonable attorneys' fees in pursuing this arbitration proceeding;
6. Pre-judgment interest at the 12 month composite US Treasury Security rate from 1989 to the date of judgment; and
7. Such other relief as the arbitration panel deems just and proper.

Respondents requested:

1. For a dismissal of Claimants' Statement of Claim in its entirety with prejudice;
2. Costs of arbitration including forum fees; and
3. Such other relief as the arbitrators deem proper.

OTHER ISSUES CONSIDERED & DECIDED

After Claimants, Harris and Carole Herman, rested their case in chief, the arbitrators reviewed and considered the positions of the parties relative to Respondent Gwendolyn Biggs' Motion for Nonsuit. The arbitrators granted Ms. Biggs' Motion and dismissed her as a party in this proceeding.

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, including the positions of the parties relative to the statute of limitations and NASD Code of Arbitration Procedure Section 15 Motion to Dismiss filed by Respondents Shearson Lehman Brothers, Inc., James Boston and Timothy McDonald, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimants, including the claim for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$1,500.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against:

Shearson Lehman Brothers, Inc. in the amount of \$32,600.00, calculated as follows: Two pre-hearing sessions times \$300.00/session plus thirty-two hearing sessions times \$1,000.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Joanna Leighton, Esq.	Public Arbitrator
Bertram H. Shaughnessy	Public Arbitrator
Anne Hennegar	Industry Arbitrator

Concurring Arbitrators' Signatures

Joanna Leighton
Joanna Leighton, Esq.

Bertram H. Shaughnessy

Anne Hennegar

Date of Decision: _____

Date Served: 06/16/93

Joanna Leighton, Esq.

Bertram H. Shaughnessy

Bertram H. Shaughnessy

Anne Hennegar

Date of Decision: _____

Date Served: 06/16/93

Joanna Leighton, Esq.

Bertram H. Shaughnessy

Anne Hennegar

Anne Hennegar

Date of Decision: 6/13/93

Date Served: 06/16/93