

N.A.S.D. AWARD  
NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michael A. Rogawski

92-00130

Name of Respondent

Shearson Lehman Brothers, Inc.

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**REPRESENTATION**

Claimant Michael A. Rogawski ("Claimant") represented himself.

Respondent Shearson Lehman Brothers, Inc. ("Respondent") was represented by William J. Burns, Esq., Vice President, Compliance Division, Shearson Lehman Brothers, Inc.

**CASE INFORMATION**

Statement of Claim filed: January 13, 1992

Claimant's Submission Agreement signed on: December 31, 1991

Statement of Answer filed by Respondent on: July 17, 1992.

Respondent's Submission Agreement signed on: July 24, 1992.

**HEARING INFORMATION**

Pre-Hearing Conference: February 5, 1993 - one session

Hearing Date/Session: March 8, 1993 - one session

Hearing Location: Hearing was conducted via a conference call.

### CASE SUMMARY

Claimant alleged that Respondent solicited a trade from him and that he placed a binding order to purchase 1000 shares of Total ADR's. Claimant alleged that Respondent's agent, Mr. Strasser, confirmed that Claimant had purchased 1000 shares of Total ADR's. Claimant alleged that Respondent's agent, Mr. Hoffman, later told Claimant that his trade had been canceled. Claimant asserted that the transaction that had been executed was binding and that Respondent could not legitimately cancel the transaction. Claimant alleged that the failure of Respondent to perform on the contract violated customary rules of fair practice and that Respondent is responsible for the subsequent monetary losses. Claimant maintained that Respondent failed to supervise the actions of its brokers.

Respondent denied all allegations of wrongdoing asserted by the Claimant. Respondent maintained that although an agent of Respondent contacted the Claimant, the purpose of the call was to solicit interest and to discuss Claimant's investment objectives. Respondent maintained that the trade could not be placed until the account was approved by a supervisor of the branch. Respondent maintained that the trade for 1000 shares of Total ADR's was never confirmed to the Claimant. Respondent maintained that Claimant was informed that Respondent would not do business with Claimant because Claimant had a history of "renegeing" on trades. Respondent maintained that on that basis the supervisor/branch manager did not authorize opening an account on Claimant's behalf. Respondent maintained that a "New Account" can only be opened after a managers approves the account for trading activity. Respondent maintained that there never was an account opened for Claimant, and that this was explained fully. Respondent maintained that it was entitled to not open an account with Claimant and that it had the right to protect itself and not do business with Claimant based on his pattern of failing to pay for trades.

### RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$2,750.

Respondent requested that the Statement of Claim be dismissed in its entirety, and that Respondent be awarded its costs, including attorneys' fees.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

**AWARD**

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

1. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective costs including attorneys' fees, other than those specifically provided for herein.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure ("Code"), the following Forum Fee(s) are assessed.

1 postponement fee x \$100 = \$100

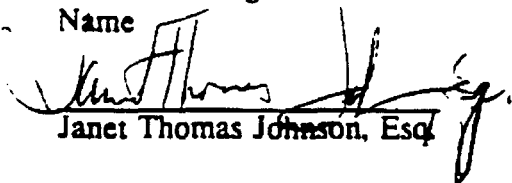
1 pre hearing conference with the Presiding Arbitrator x \$100 = \$100

1 hearing session conducted via telephone conference call x 100 = \$100

Pursuant to Section 43 of the Code, the postponement fee of \$100 is assessed against Respondent. The pre hearing conference fee of \$100 is assessed against Respondent. The hearing session fee of \$100 for the single hearing session conducted on March 8, 1993 is assessed against Claimant in the amount of \$100. Claimant is entitled to offset this amount with his previously submitted hearing session fee of \$100 so that no monies are due from the Claimant. Respondent shall pay to the NASD the sum of \$200.

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

Arbitrator's Signature  
Name

  
Janet Thomas Johnson, Esq.

Public/Industry

Date of Decision: March 16, 1993