

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Yvonne Johnston

CASE #92-00162

Name of Respondents

Shearson Lehman Brothers, Inc.  
Paul McMahon

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REPRESENTATION

For Claimant Yvonne Johnston: Eric Weiss, Esq. of Mintz & Fraade, P.C.

For Respondents Shearson Lehman Brothers, Inc. and Paul McMahon: Paul Williams, Esq. of Schupbach, Williams & Pavone.

CASE INFORMATION

Statement of Claim filed: January 9, 1992.

Claimant's Submission Agreement signed on: June 24, 1992.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Paul McMahon on: June 12, 1992.

Respondent Shearson Lehman Brothers, Inc. did not submit a submission agreement as required under Section 1 and 12 of the Code of Arbitration Procedure.

Respondent Paul McMahon's Submission Agreement signed on: July 30, 1992.

HEARING INFORMATION

Hearing Date/Sessions: October 20, 1992 - 2 Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that she disclosed her entire financial condition to Respondents and informed Respondents she had no experience in the management of securities portfolios thus she relied entirely on Respondents in making investments on behalf of Claimant and Respondents were aware of this. Claimant further alleged Respondents employed devices, and schemes and artifacts to defraud Claimant, and Respondents made untrue statements of material facts, and Respondent Shearson knowingly and intentionally permitted Respondent Paul McMahon to recklessly supervise Claimant's Account.

Respondents maintained that no detail whatsoever is provided concerning the specific acts or omissions which Claimant alleges Respondents committed, and Respondents deny any wrongdoing with respect to Claimant and deny any liability to Claimant. Respondents asserted the following defenses: failure to state a claim, Claimant instructed, directed, authorized, consented to and ratified the transaction in question, waiver, estoppel, Respondents acted in good faith and consistent with Claimants stated investment objectives, laches, and statute of limitations.

RELIEF REQUESTED

Claimant requested: \$100,000.00 in compensatory damages and interest, costs, disbursements and attorneys' fees.

Respondents requested: all claims be dismissed and Respondents be awarded costs, expenses and attorneys' fees.

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. All claims by Claimant be and hereby are dismissed in their entirety.
2. Each party is to bear its own costs including attorneys' fees.

FORUM FEES

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

2 sessions x \$500.00 = \$1,000.00 less \$500.00 hearing  
session deposit = \$500.00 net due.

Claimant be and hereby is liable and shall pay the NASD the sum of \$500.00 to represent forum fees.

The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously deposited by Claimant.

CONCURRING ARBITRATORS' SIGNATURE

Name

Public/Industry

  
\_\_\_\_\_  
John J. Winkowski, Jr., Esq.

\_\_\_\_\_  
Industry

Date of Decision: October 29, 1992

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 15 day of October, 1992, before me personally appeared **Andrew L. Aaron, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Sharon L. Sturm

SHARON L. STURM  
NOTARY PUBLIC, State of New York  
No. 4970893  
Qualified in New York County  
Term Expires August 20, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 15 day of October, 1992, before me personally appeared **Lotte Fields** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Sharon L. Sturm

SHARON L. STURM  
NOTARY PUBLIC, State of New York  
No. 4970893  
Qualified in New York County  
Term Expires August 20, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 15 day of October, 1992, before me personally appeared **Edward S. Desalvio** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Sharon L. Sturm

SHARON L. STURM  
NOTARY PUBLIC, State of New York  
No. 4970893  
Qualified in New York County  
Term Expires August 20, 1994

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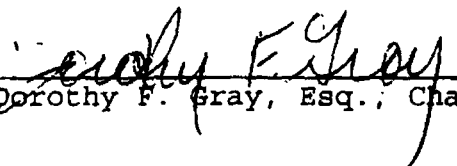
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The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously deposited by Claimant.

CONCURRING ARBITRATORS' SIGNATURE

Name

Public/Industry

  
\_\_\_\_\_  
Dorothy F. Gray, Esq., Chairperson

\_\_\_\_\_  
Public

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John J. Witkowski, Jr., Esq.

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Industry

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Marc L. Ripp, Esq.

\_\_\_\_\_  
Public

Date of Decision: October 29, 1992

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CONCURRING ARBITRATORS' SIGNATURE

Name

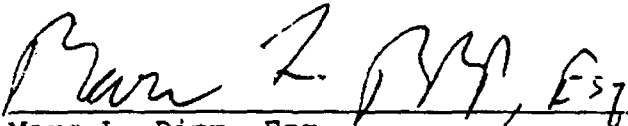
Public/Industry

Dorothy F. Gray, Esq., Chairperson

Public

John J. Witkowski, Jr., Esq.

Industry

 Esq.  
Marc L. Ripp, Esq.

10/26/92  
Public

Date of Decision: October 29, 1992

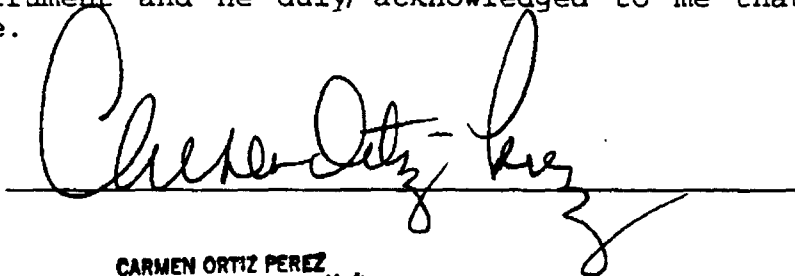
STATE OF:

NY  
NY

SS:

COUNTY OF:

On this 26 day of Oct 19 92 before me personally appeared Dorothy F Gray to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



CARMEN ORTIZ PEREZ  
Notary Public, State of New York  
No. 31-4802513  
Qualified in New York County  
Commission Expires January 31, 1993

STATE OF: *New York*

COUNTY OF: *Richmond*

SS:

On this *27* day of *October* 19 *92*, before me personally appeared *John J. Witkowski, Jr.* to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Michael Christie*

MICHAEL CHRISTIE  
Notary Public, State of New York  
No. 43-4883113  
Qualified in Richmond County  
Commission Expires *1-26-93*

STATE OF: *NEW JERSEY*

SS:

COUNTY OF: *ESSEX*

On this *26<sup>th</sup>* day of *October* 19*92*, before me personally appeared *MARC L. RIPP, ESQ.* to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Carol L. Uzzardi*

CAROL L. UZZARDI  
A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 3, 1995