

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Audrey Atlas

92-00427

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
George Kimmel

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REPRESENTATION

For Claimant Audrey Atlas: Gary N. Weintaub, Esq. of the law firm of Farulo, Caputi, Weintraub and Neary.

For Respondents Shearson Lehman Brothers, Inc. and George Kimmel: Paul R. Williams, Esq. of the law firm of Schupbach Williams and Pavone.

CASE INFORMATION

Statement of Claim filed on: February 4, 1990. Letter dated May 18, 1992 from Gary N. Weintraub to Director of Arbitration.

Claimant Audrey Atlas' Submission Agreement signed on: January 30, 1992.

The Respondents did not execute Submission Agreements as required pursuant to Section 25 of the Code of Arbitration Procedure.

Joint Statement of Answer filed by Respondents on: April 6, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: January 12, 1993 / One Session  
January 28, 1993 / Two Sessions

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

### **CASE SUMMARY**

Claimant alleged that she was misinformed about the soundness of the investment she was induced to make in America West Airlines bonds which were sold to her by Respondents apparently out of its own holdings. Claimant further alleged Respondents armed with better information than Claimant, as an individual could obtain, was acting in their own interests in selling off its holding in America West to the Claimant. Claimant further alleged the investment was unsuitable for her given her financial and personal circumstances which her account executive Mr. George Kimmel was aware of.

Respondents maintained while it is regrettable that the value of the Claimant's investment decreased, it was, due solely to market forces beyond Respondents' control for which Respondents and its agents cannot be held responsible. Respondents further maintained they are not liable to Claimant because at all times they acted properly and in good faith with regard to the Claimant's account and consistently with regard to the stated investment objectives of the account; Claimant exercised control over her account as it was her practice to have all her investments sent to her after the purchase, instead of having them in her Shearson account. Respondents further maintained Claimant's investment activity was consistent with the representations made by her to her broker, Mr. George Kimmel.

### **RELIEF REQUESTED**

Claimant requested damages of \$25,412.20 plus interest.

Respondents requested that the case be dismissed and that Respondents be awarded their costs, disbursements and attorneys' fees incurred in connection herewith.

### **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. The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$18,612.20 interest specifically excluded.
2. All claims against Respondent George Kimmel be and hereby are dismissed in all respects.

3. The Respondent Shearson Lehman Brothers, Inc. shall reimburse the Claimant the sum of \$400.00 to represent the fees paid in this matter.
4. 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.

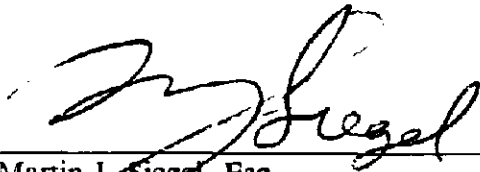
3 sessions x \$300.00 = \$900.00 minus Claimant's hearing session  
deposit \$300.00 = net \$600.00 due.

The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the NASD the sum of \$600.00 to represent forum fees.

The NASD shall retain the \$100.00 filing fee previously deposited by the Claimant.

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

**ARBITRATION PANEL**

  
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Martin I. Siegel, Esq.

Public Arbitrator

Decision Dated: February 22, 1993

STATE OF: *ny*

SS:

COUNTY OF: *ny*

On this *11* day of *sep*, 1993, before me personally appeared **Martin J. Siegel, 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.

*James C. Watter*  
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JAMES C. WATTER

Notary Public for the State of New York  
Qualified in New York County  
Commission Expires Aug. 31, 1993