

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Wayne W. Williams

92-00567

Name of Respondent(s)

Shearson Lehman Brothers, Inc.

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**REPRESENTATION**

For Claimant, Wayne W. Williams ("Claimant"), Marc E. Antine, Esq., from the law firm of Roster & Antine.

For Respondent, Shearson Lehman Hutton ("Shearson"), R. Scott Henderson, Esq. from the law firm of Bingham, Dana & Gould.

**CASE INFORMATION**

Statement of Claim was filed on April 6, 1992.

Claimant's Submission Agreement was signed on April 3, 1992.

Shearson's Statement of Answer was filed on August 31, 1992.

Shearson's Submission Agreement was signed on June 29, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: March 18, 1993 - Two Sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston Massachusetts.

**CASE SUMMARY**

Claimant alleges that on January 16, 1990, Mr. Jackson, his broker at Shearson, told him that

Executon Stock was trading at 3 1/2 to 3 5/8. Claimant alleges that he told Mr. Jackson to purchase 20,000 shares at a limit of 3 3/8 to 3 5/8 and on January 18, 1990 Mr. Jackson purchased the shares at \$4.00 per share without authorization.

Claimant further alleges that on the same day, January 18, 1990, he was able to purchase the same stock at another brokerage firm for \$3.875 per share. Claimant contends that Shearson inflated the price of the stock.

Respondent denies the allegations of the Statement of Claim which they claim are without merit and should be dismissed.

Respondent states that Claimant is an experienced and active investor. Respondent contends that Claimant actually paid a lower or the same price for the shares at Shearson compared to the other brokerage firm. Respondent states that while Claimant was charged a commission at the other brokerage firm, he was only charged a mark-up at Shearson because Shearson was a market maker. Respondent further states that the mark-up was disclosed to Claimant on the confirmation.

Respondent contends that Claimant did not place a limit order. Respondent argues that Claimant was well aware that Executon was a thinly-traded, over-the-counter stock, which fluctuated from day to day. Respondent further argues that the fact that Claimant placed an order at the other brokerage firm for a higher price than that at Shearson undermines Claimant's allegation that he had placed a limit order at Shearson.

#### **RELIEF REQUESTED**

Claimant requests an award of \$25,000.00.

Respondent requests that the claim be dismissed at the outset of the proceeding and that Respondent be awarded its attorney's fees and costs incurred in replying to the Statement of Claim.

#### **OTHER ISSUES CONSIDERED & DECIDED**

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,

undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant against Respondent are denied.
2. Respondent's request for attorney's fees and cost is denied.
3. Claimant was successful in obtaining a postponement of the hearing previously scheduled for November 5, 1992. The fee for that postponement is waived.
4. Respondent shall reimburse Claimant \$300.00 as stated in the Forum Fees Section of this Award.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed equally against both parties.

Non-refundable Filing Fee: \$100.00.

Hearing Session Fees: \$400.00 x 2 sessions = \$800.00.

1. Claimant previously deposited \$750.00 and is entitled to a refund of \$300.00.
2. Respondent shall reimburse Claimant \$300.00 and remit the balance, \$150.00, to the NASD.

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

#### **ARBITRATION PANEL**

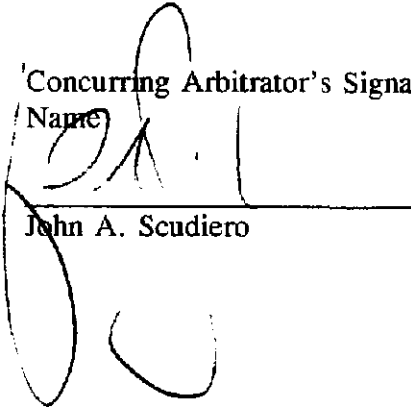
William H. McCarter, Jr., Esq. - Public Chairperson

John A. Scudiero - Public Panelist

William J. Aziz - Industry Panelist

Page 4  
Case #92-00567

Concurring Arbitrator's Signature  
Name

  
John A. Scudiero

Date of Decision: April 26, 1993

Page 4  
Case #92-00567

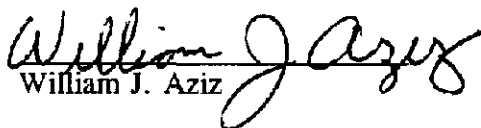
Concurring Arbitrator's Signature  
Name

William H. McCarter, Jr.  
William H. McCarter, Jr., Esq.

Date of Decision: April 26, 1993

Page 4  
Case #92-00567

Concurring Arbitrator's Signature  
Name

  
William J. Aziz

Date of Decision: april 26, 1993