

## NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between	:	
Karl & Elaine Katz	:	
	:	
Claimants	:	
	:	CASE #92-00675
vs.	:	AWARD
	:	
Shearson Lehman Brothers, Inc.	:	
James G. Carroll	:	
	:	
Respondents	:	

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 25, 1992, Claimants Karl & Elaine Katz, who appeared Pro Se, alleged that in January 1990 they contacted their Financial Consultant, Kevin Peters with Respondent Shearson Lehman Brothers, Inc. for a \$50,000 loan at a minimum rate of interest and subsequently, thereafter, they received a brochure from Respondent Shearson Lehman Brothers, Inc. in reference to a loan of \$100,000 at 10% interest without any other specific information. Claimants further alleged that Respondent Shearson Lehman Brothers, Inc. induced them to purchase a \$50,000 Federal National Mortgage Bond ("FNMA") as part of the \$100,000 loan to take advantage of the 10% interest rate whereby Claimants were informed that the 9% dividend earned on the FNMA would help defray the 10% interest of the \$100,000 loan. Claimants contended that on their monthly statements of January 28, 1990, their \$100,000 loan was officially credited to their account, as well as their pledged security of about \$175,000, in addition to their 1,200 shares of ConEd- was also included in the same listing, at which time, Claimants returned a T-4 Regulation Form, listing only the ConEd security. Claimants further contended that the T-4 Form was returned with the understanding that their ConEd security was more than adequate to protect them against the T-4 regulation forbidding the purchase of FNMA with borrowed funds. Claimants asserted that Respondent Shearson Lehman Brothers, Inc. failed to credit them for the difference in an overcharge of 10 1/4% and 10 3/4% and the 10% interest they stipulated. Claimants further asserted that on March 10, 1990 they received a updated "Negative Consent Notice" from Respondent Shearson Lehman Brothers, Inc. that they may have violated a U.S. Treasury T-4 regulation, two months after they had submitted a signed T-4 form. Claimants argued that Respondent

Shearson Lehman Brothers, Inc. switched their \$50,000 loan for the purchase of the FNMA Bond to an American Express and Shearson Lehman Hutton daily dividend fund without their authorization, despite the fact that they had been led to believe that the FNMA Bond would be purchased immediately following the credit to their account of the \$100,000 loan, at which time, Claimants discovered that Respondent Shearson Lehman Brothers, Inc. forged their signatures on an updated "client agreement". Claimants further argued that Respondents' reckless management of their investments and exposing them to violations of the U.S. Treasury T-4 regulation, in addition to Respondent James G. Carroll's failure to rectify the matter, caused them to sustain losses.

Respondents, Shearson Lehman Brothers, Inc. and James G. Carroll by and through their in-house counsel Ann Parry, Esq., maintained that in early January 1990 Claimants Karl & Elaine Katz contacted their Financial Consultant, Kevin Peters to instruct him to take out an express credit loan in the amount of \$100,000, at which time, Claimants informed Mr. Peters that the availability of this loan had been brought to their attention by a brochure included in their Shearson monthly statement whereby it offered low interest rates on variable rate collateralized loans of \$100,000. Respondents further maintained that on January 10, 1990 Claimants executed Federal Reserve, Form T-4, the "Statement of Purpose for an Extension of Credit by a Creditor" whereby Claimants indicated that they intended to use the proceeds of this loan to refinance a house and acknowledged that "no part of this credit would be used to purchase, carry, or trade in securities". Respondents contended that the Form T-4 also identifies the securities to be held as collateral for the loan to Claimants and those securities included: 1,200 shares of Con Edison; 3,111 shares of Franklin New York Tax Free; 4,230 shares of Putnam Managed Municipal Income; and 4,606 shares of the SLH Portfolio Mortgage. Respondents further contended that in accordance with procedure and Federal Reserve Board Regulation T, a separate "express credit" account was established for Claimants and the first monthly statements for that account shows that the collateral listed on Form T-4 was transferred into the account on January 16, 1990 whereby Claimants were paid the \$100,000 proceeds of the loan. Respondents asserted that on January 25, 1990 Claimants deposited a check in the amount of \$50,000 in the Joint Account and at the end of the month, those funds were automatically "swept" into the SLH Daily Dividend Fund, a money market fund, at which time, Claimants were sent a "Negative Consent Notice" confirming the proceeds of the loan could not be used to purchase securities and that recent deposits in the Joint Account did not include any proceeds from the loan. Respondents further asserted that on or about February 20, 1990 Claimants advised Mr. Peters that they wished to purchase a U.S. Government backed investment that would generate income and subsequently, Claimants purchased a \$50,000 FNMA bond paying 9% interest, at

which time, Claimants redeemed shares of their SLH Daily Dividend Fund to purchase the FNMA bond. Respondents argued that on August 30, 1990 Claimants advised Respondents to sell their FNMA bond and apply the proceeds to the repayment of their express loan, thus leaving an unpaid balance of \$56,197.88 whereby Claimants paid off the remainder of the loan by November 1991. Respondents further argued that Claimants were fully informed and advised of all relevant information thus, Claimants' claims were without merit.

Respondents asserted that Respondent James G. Carroll be dismissed from this proceeding in that he is an attorney with Respondent Shearson Lehman Brothers, Inc. and was not in any way involved in the handling of Claimants' account, therefore, Respondent James G. Carroll should be dismissed.

Claimants replied to Respondents Motion to Dismiss, Respondent James G. Carroll by asserting that since Respondent James G. Carroll is a V.P. & Associate General Counsel for Respondent Shearson Lehman Brothers, Inc., he should have the obvious authority and credentials to follow through with the claim, therefore, the Motion to Dismiss should be denied.

#### RELIEF REQUESTED

Claimants Karl & Elaine Katz requested \$7,621.00 in actual damages.

Respondents Shearson Lehman Brothers, Inc. and James G. Carroll requested the claim be dismissed and they be awarded costs and expenses.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert A. Williams, Jr., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 18, 1992 and not by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

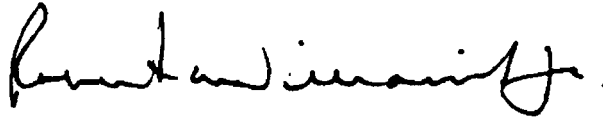
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Karl & Elaine Katz against Respondents Shearson Lehman Brothers, Inc. and James G. Carroll are dismissed.

2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Karl & Elaine Katz shall be retained by the NASD, Inc.

AFFIRMATION

I, ROBERT A. WILLIAMS, JR., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



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Signature of Arbitrator

DATE OF DECISION: September 24, 1992