

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Iris F. Agar

92-00862

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Brenda Baxter
Terry Sherman

REPRESENTATION

For Claimant Iris Agar: Morgan Bentley, Esq. of the law offices of Morgan Bentley.

For Respondents Shearson Lehman Brothers, Inc., Brenda Baxter and Terry Sherman:
Paul Williams, Esq. of Schupbach, Williams and Pavone.

CASE INFORMATION

Statement of Claim filed: March 10, 1992.

Claimant Iris Agar's Submission Agreement signed on: March 4, 1992.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc., and Brenda Baxter on: June 15, 1992.

Respondent Shearson Lehman Brothers Inc.'s Submission Agreement signed on: October 29, 1992.

Statement of Answer filed by Respondent Terry Sherman on: April 27, 1992.

Respondent Terry Sherman's Submission Agreement signed on: April 24, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: October 29, 1992 / Two Sessions
 October 30, 1992 / Two Sessions
 November 19, 1992 / Two Sessions
 November 27, 1992 / One Session

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

CASE SUMMARY

Claimant alleged she was relying on Respondents Baxter and Shearson and their professional knowledge and experience, to guide her through the complex world of investments and to provide her with advice on investments which would preserve her assets for future retirement and would promote growth and income without substantial risk. Claimant further alleged Respondents recommendation and their recommended investment objective and strategy was unsuitable for Claimant and Claimant did not understand nor was Claimant told the risks of Respondents strategy. Claimant further alleged Respondents breached their contract with Claimant, breached their fiduciary duty to Claimant, misrepresented and omitted material facts, acted negligently, committed fraud and failed to supervise.

Respondents Shearson Lehman Brothers, Inc. and Brenda Baxter maintained that from the time Claimant first opened her account with Respondent Baxter, her stated investment objectives included both appreciation and income with risk and Claimant had opportunities to correct this information if not accurate. Respondents further maintained Claimant was fully aware of all activity in her account and throughout the life of the account Claimant was in constant contact with her brokers. Respondents asserted the following affirmative defenses: failure to state a claim, ratification, waiver, estoppel, Respondents acted in good faith and in accordance with applicable rules and regulations, Respondent Shearson Lehman Brothers, Inc. maintained an adequate and reasonable system of supervision and control over employees, laches and statute of limitations.

Respondent Sherman maintained that Claimants' investment objectives were to make as much money as she could as quickly as she could. Respondent Sherman further maintained that after the 1987 market crash Claimant insisted her portfolio be realigned to meet her immediate desires, and in 1988 insisted another crash was inevitable thus Claimant demanded that she be liquidated of all equities that would make her vulnerable to such an instance. Respondent Sherman further maintained appropriate measures were taken both initially and concurrently to apprise her and her advisors of the advice and recommendations made on her behalf, and no advice, recommendations nor actions made were ever dismissed or questioned as to their suitability.

RELIEF REQUESTED

Claimants requested compensatory damages of \$40,000.00 plus interest, punitive damages plus reimbursement of filing fees costs, and attorneys' fees.

Respondent requested all claims be dismissed and Respondents be awarded costs, disbursements and attorneys' fees.

AWARD

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

1. Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay Claimant the sum of \$19,459.20 inclusive of interest.
2. Respondent Terry Sherman be and hereby are liable and shall pay jointly and severally Claimant the sum of \$4,864.80 inclusive of interest.
3. Claimant's claim for punitive damages be and hereby is denied in its entirety.
4. Each party shall bear their own costs, including attorneys' fees.
5. Respondents Shearson Lehman Brothers, Inc., and Terry Sherman be and hereby are liable, jointly and severally, and shall pay Claimant \$520.00 to represent filing fees.

FORUM FEES

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

7 sessions x \$400.00 = \$2,800.00 less \$400.00 hearing
session deposit = \$2,400.00 net due.

Forum Fees Assessed Against:

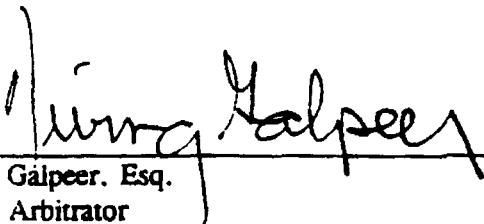
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Respondents Shearson Lehman Brothers, Inc., Terry Sherman be and hereby are liable, severally, and shall pay the NASD the sum of \$1,920.00 and \$480.00 respectively to represent forum fees.

The NASD shall retain the \$120.00 filing fee and \$400.00 hearing session deposit previously deposited by Claimant.

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

ARBITRATION PANEL



Irving Galpeer, Esq.
Public Arbitrator

Melvin Lyon
Public Arbitrator

John J. Witkowski, Jr., Esq.
Industry Arbitrator

STATE OF: New York
COUNTY OF: New York

SS:

On this 6th day of May, 1993, before me personally appeared Irving J. Galpeer, 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.

Richard Kendall

RICHARD KENDALL
Notary Public, State of New York
No. 24-6787287
Qualified in Kings County
Commission Expires Jan. 31, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Melvin Lyon 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared John J. Witkowski, Jr., 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.

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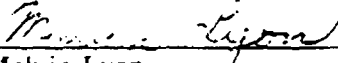
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ARBITRATION PANEL

Irving Galpeer, Esq.
Public Arbitrator


Melvin Lyon
Public Arbitrator

John J. Witkowski, Jr., Esq.
Industry Arbitrator

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Irving J. Galpeer, Esq.** know 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.

STATE OF: *New Jersey*

SS:

COUNTY OF: *Hiddlesey*

On this *3rd* day of *April*, 1993, before me personally appeared **Melvin Lyon** 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.

Carol A. Edmonds

CAROL A. EDMONDS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 3, 1995

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **John J. Witkowski, Jr., 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.

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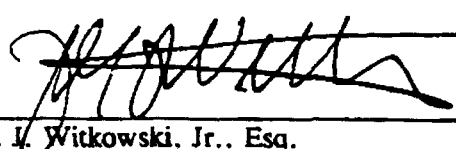
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Irving Galpeer, Esq.
Public Arbitrator

Melvin Lyon
Public Arbitrator



John L. Witkowski, Jr., Esq.
Industry Arbitrator

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Irving J. Galpeer, Esq. know 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Melvin Lyon 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.

STATE OF: *New York*

SS:

COUNTY OF: *Richmond*

On this *16th* day of *March*, 1993, before me personally appeared John J. Witkowski, Jr., 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.

Albert Goldsmith

ALBERT GOLDSMITH
Commissioner of Deeds
City of New York - No. 5-299
Certificate filed in Richmond County
Commission Expires April 1, 1997