

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Anita Velez Mitchell

Case #:  
92-00909

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
Charles Sperrazza

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**REPRESENTATION**

For Claimant, Anita Velez Mitchell ("Claimant"), Richard Realmuto, Esq. from the law firm of Realmuto & D'Alessio.

For Respondents, Shearson Lehman Brothers, Inc., ("Shearson") and Charles Sperrazza ("Sperrazza"). Christine Tracey, Esq., in-house counsel for Shearson.

**CASE INFORMATION**

Statement of Claim filed on June 29, 1992

Claimant's Submission Agreement was signed on March 12, 1992

Joint Statement of Answer was filed by Shearson and Sperrazza on September 8, 1992

Shearson's Submission Agreement was signed on September 4, 1992

Sperrazza's Submission Agreement was signed on October 4, 1992

**HEARING INFORMATION**

Hearing Dates/Sessions:	June 2, 1993 -	1 session
	June 3, 1993 -	1 session
	June 9, 1993 -	2 sessions
	August 25, 1993 -	1 session

Hearing Location: National Association of Securities Dealers, Inc.'s offices

located at 33 Whitehall Street. New York City.

### CASE SUMMARY

Claimant alleges that she informed Shearson and Sperrazza ("Respondents") that, as a retired widow, she wanted her funds invested in liquid and conservative fixed income securities. The income generated from these conservative investments was to be derived from interest and dividend income and was intended to provide and supplement the annual living expenses of the Claimant. Additionally, Claimant alleges that she instructed Respondents that the principal portion of these investments were to be invested in safe securities which could be liquidated at anytime in order to meet any unanticipated financial demands. Claimant alleges that these financial expectations were totally ignored by the Respondents, who chose instead to invest virtually all of Claimant's investment portfolio in highly speculative limited partnerships and high risk securities. Claimant alleges that Respondents fraudulently and intentionally disregarded Claimant's investment objectives and chose instead to purchase unsuitable investments for the Claimant by opening a new account (the "Special Account") and utilizing a New Account Investment Objectives form which was never executed by Claimant. Claimant alleges that Respondents also invested \$16,365 of Claimant's funds in highly speculative securities, which contradicted Claimant's specific requests that her funds always remain in liquid, conservative, and fixed income securities. Claimant alleges that she met with Sperrazza and was informed that her account had been depleted due to a number of unauthorized trades. Claimant alleges that at that time Sperrazza assured her that he would personally replace the lost investments, but he has subsequently refused to replace those lost earnings. Claimant alleges that Respondents made recommendations which were unsuitable; made fraudulent representations to Claimant; that Shearson failed to properly supervise Sperrazza and made trades in Claimant's account for the sole purpose of generating commissions.

Respondents maintain that Claimant and her former husband were clients of Sperrazza when he was a broker with Merrill Lynch and remained his clients when he transferred to Shearson in July 1984. Respondents maintain that Claimant received copies of each and every account statement and trade confirmation for her account and that Sperrazza spoke with her frequently concerning her investments and spoke with her accountant quarterly. Respondents maintain that Claimant's investment objectives for the Special Account, which was funded with only a fraction of the money invested in all her accounts, included appreciation with risk speculation. These investment objectives were authorized and well understood by Claimant. Respondents maintain that after Claimant's withdrawals began to deplete her accounts, Sperrazza repeatedly discussed with her the need to curtail her spending or look for growth investments. Respondents maintain that because Claimant would not, and did not, reduce her spending, she told Sperrazza to fund investments which would yield her greater returns and profits. Respondents allege that, in so doing,

Claimant understood that high returns would require greater risks. Respondents deny that Sperrazza engaged in excessive trading or made unsuitable investment choices. Respondents maintain that Sperrazza did not ignore Claimant's investment goals nor made unsuitable investments for her. Respondents maintain that Claimant's claim fails to state a claim upon which relief may be granted and that the losses sustained by Claimant were attributable solely to market fluctuations.

### **RELIEF REQUESTED**

Claimant requested: (1) \$101,366.00 in actual damages; (2) \$350,000.00 in punitive damages; (3) \$9,122.00 in lost opportunity costs on investments; and (4) cost of these proceedings and reasonable attorneys fees.

Respondents request that the Claimant's claim be denied in its entirety and that the costs of this matter be assessed against Claimant.

### **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 original(s) remain on file with the NASD.

### **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) Claimant's claim is denied in its entirety.
- 2) Each party shall bear its respective cost of these proceedings.
- 3) Claimant shall pay for one-half of the forum fees for the cost of these proceedings. Respondents shall, jointly and severally, pay for one-half of the costs of these proceedings.



### **FORUM FEES**

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

Non-refundable Filing Fee: \$200.00  
Hearing Session Fees: \$750 x 5 sessions = \$3,750

1) Claimant shall pay the NASD the sum of \$1,875. to be offset by the \$200.00 filing fee and the \$750 in initial hearing session deposit already paid to the NASD. Net due to the NASD = \$925.00.

2) Respondents shall pay the NASD the sum of \$1,875.00.

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

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Concurring Arbitrators' Signatures  
Name

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Mark D. Shefts  
Industry Concur

A handwritten signature in black ink, reading "David M. Kaplan". The signature is written in a cursive, flowing style with a large initial "D" and "K".

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David Kaplan  
Public Concur

I respectfully dissent. Respondent's strategy and the level of commissions it would generate were not adequately disclosed to Claimant and her advisors. I would have calculated an award to Claimant to compensate for excessive commissions.

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David Brainin  
Public Arbitrator Dissent

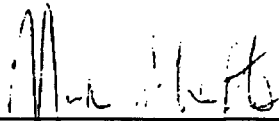
Date of Decision: October 18, 1993



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*David Brainin*  
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