

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Barbara Kalmus, David Kalmus et al.

92-01183

**Name of Respondents**

Shearson Lehman Brothers, Inc.  
Evan Katz

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**REPRESENTATION**

For Claimants Barbara Kalmus and David Kalmus, individually and as custodians for Perry Kalmus, Daryn Kalmus and Oren Kalmus (Claimants): Thomas D. Giachetti, Esq. of the law firm Stark & Stark.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and Evan Katz ("Katz") : Thomas A. Roberts, Esq. of the law firm of Shanley and Fisher.

**CASE INFORMATION**

Statement of Claim filed: April 1, 1992  
Claimants' Submission Agreement signed on: March 31, 1992

Joint Statement of Answer filed by Respondents Shearson and Katz (collectively referred to as "Respondents") on: June 12, 1992  
Shearson's Submission Agreement signed on: June 9, 1992  
Katz's Submission Agreement signed on: June 9, 1992

**HEARING INFORMATION**

Pre-Hearing Conference: none were conducted

Hearing Dates/Sessions: May 25, 1993 - two sessions  
May 26, 1993 - two sessions

Hearing Location: NASD Office, Philadelphia, Pennsylvania

### **CASE SUMMARY**

Claimants alleged that they were unsophisticated investors whose investment objective was conservative growth commensurate with maximum preservation of capital. Claimants alleged that their investment objectives were conveyed to Respondents through Katz. Claimants alleged that they relied on Katz entirely and he failed to make material disclosures to them and that he failed to inform Claimants of the relative risks associated with the investments he recommended. Claimants alleged that Katz made material misrepresentations to induce Claimants to invest in limited partnerships that were unsuitable for them. Claimants alleged that Respondents failed to disclose the handsome commissions they received on the sales of limited partnerships. Claimants alleged that Respondents were more interested in generating commissions for themselves than the Claimants well being. Claimants also alleged unauthorized trading, undue influence and failure to supervise.

Respondents denied each and every allegation of wrongdoing asserted by the Claimants. Respondents maintained that the investments were not wrongfully induced by any improper motive on the part of Respondents or that the investments were unsuitable. Respondents maintained that Claimants were not misled concerning the characteristics of the investments or concerning the risks attendant to the investments. Respondents maintained that all investments were specifically authorized by the Claimants. Respondents denied that there was any supervisory failure with respect to these accounts.

### **RELIEF REQUESTED**

Claimants requested rescission of the limited partnerships, compensatory damages in the amount of \$68,190.00, plus punitive damages, attorneys' fees, and costs.

Respondent requested that Claimants' claim be denied in its entirety and that all costs be assessed against Claimants.

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

The parties have agreed that the Panel's 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim for rescission of the following three limited partnerships is granted:

a) That Respondent Shearson shall pay to the Claimants the sum of \$28,000 at which time Claimants are directed to deliver back to Respondent Shearson their Equitable Real Estate Shopping Centers Limited Partnership ("Equitable") investments.

b) That the Respondent Shearson shall pay to Claimants the sum of \$15,000 at which time Claimant is directed to deliver back to Respondent Shearson Claimants' Shopco Laurel Centre Limited Partnership ("Shopco") investment.

c) That Respondent Shearson shall pay to the Claimants the sum of \$3,000 at which time Claimants are directed to deliver back to Respondent Shearson their Balcor Equiry Pension Investors VII ("Balcor VII") investment.

Therefore the total amount that Respondent Shearson shall pay to Claimants is \$46,000 at which time Claimants shall return to Respondent Shearson Claimants investments in Equitable, Shopco and Balcor VII.

2. That all claim against Respondent Katz are denied in their entirety.
3. That Claimants request for interest on these investments is denied.
4. That Claimants claim for punitive damages is denied.
5. That all other claims for costs, specifically attorneys' fees, are denied.
6. That the parties shall bear their own expenses except for as provided herein.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing session x \$500 = \$2,000

The four hearing sessions conducted in this matter shall be assessed equally between the Claimants and the Respondents so that the amount assessed against Claimants as forum fees is \$1,000. Claimants are, however, entitled to offset this amount with their \$500 hearing session deposit previously paid so that the amount due from the Claimants is \$500.

Respondents are jointly and severally assessed forum fees in the amount of \$1,000.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

Lewis T. Hatcher  
Lewis T. Hatcher

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Date of Decision: \_\_\_\_\_

NASD Date of Decision: June 24, 1993

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

Concurring Arbitrators' Signatures

Name

Public/Industry

Joseph R. Lally  
Joseph R. Lally, Esq.

Date of Decision: 6/18/93

NASD Date of Decision: June 24, 1993

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

Concurring Arbitrators' Signatures

Name

Public/Industry

Richard W. Bourbon  
Richard W. Bourbon, Esq.

Public

Date of Decision: 26 May, 1993

NASD Date of Decision: June 24, 1993