

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Nathaniel Green

Claimant

CASE #92-01233  
AWARD

vs.

Shearson Lehman Hutton, Inc.

Respondent

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 9, 1992, Claimant Nathaniel Green who appeared Pro Se, alleged that in March 1987 he informed Respondent Shearson Lehman Brothers, Inc. by and through Gary Owens, Financial Consultant, that he was interested in receiving competent benefit from any pension plan from a private company. Claimant further alleged that on March 20, 1987 Respondent by and through Mr. Owens, advised him to invest \$2,000.00 of his IRA funds in Capital Growth MTG INV LP. Claimant contended that Respondent's inappropriate handling of his funds caused him to sustain losses.

Respondent Shearson Lehman Brothers, Inc. by and through their in-house counsel Ann Parry, Esq., maintained that on or about March 1984 Claimant Nathaniel Green opened an IRA account whereby Gary Owens was the Financial Consultant assigned to Claimant's account, at which time, Claimant indicated that his investment objectives were "appreciation with risk" and "appreciation with safety." Respondent further maintained that in March 1987, when it came time for Claimant to make his annual IRA investment, Mr. Owens presented to Claimant various investment alternatives, including the Shearson Pension and Retirement Investors Fund, L.P., (n.k.a. Capital Growth Mortgage Investors, L.P.; the "Partnership") whereby Claimant decided to invest \$2,000.00. Respondent contended that the Partnership was recommended as suitable for "investors for whom current income from accrued interest, compounded annually, over a period of up to 12 years, will be tax-free and who have no need for current distributions, and for certain IRA accounts". Respondent further contended that since Claimant invested in the Partnership, economic conditions as well as real estate market trends have negatively affected the Partnership's portfolio. Respondent asserted that Claimant's assertion of fraudulent acts is meritless and appears to be based on the misguided theory that fraud must be present since his investment in the Partnership did not perform as anticipated.

**RELIEF REQUESTED**

Claimant Nathaniel Green requested \$2,000.00 in actual damages plus interest at the rate of 7% per annum and punitive damages in the amount of \$400.00.

Respondent Shearson Lehman Brothers, Inc. requested the claim be dismissed.

**AWARD**

Pursuant to Section 13 of the national Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arnold O. Flicker, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 25, 1992 and not by the Respondent 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. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to the Claimant Nathaniel Green the sum of \$2,000.00 in damages whereby Claimant's interest in the shares purchased are transferred back to Respondent and the sale is voided.
2. Respondent Shearson Lehman Brother, Inc. is liable and shall pay to the Claimant interest at the legal statutory rate from March 20, 1987 to the date of the payment of the award.
3. The Claimant's request for punitive damages is denied.
4. The parties shall bear their respective costs.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Nathaniel Green shall be retained by the NASD, Inc. Respondent Shearson Lehman Brothers, inc. is liable and shall pay to the Claimant the sum of \$125.00 as reimbursement.

AFFIRMATION

I, **ARNOLD O. FLICKER, ESQ.**, 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.

*Arnold O. Flicker*

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Signature of Arbitrator

DATE OF DECISION: January 11, 1993

STATE OF: *New York*

SS:

COUNTY OF: *Schenectady*

On this 5<sup>th</sup> day of JAN<sup>U</sup>, 1993 before me personally appeared Arnold O. Flicker, Esq., to me 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.

*Alex Sherman*

*Alex Sherman*

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Notary Public - State of N.Y.  
County of *Schenectady* # *41-3634865*  
Comm. Exp. *2/28/94*