

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Leon S. Trenholm

vs.

Case #  
92-01611

Name of Respondent

Shearson Lehman Brothers, Inc.

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REPRESENTATION

For Claimant, Leon S. Trenholm ("Claimant"), Ralph A. Dyer, Esq.

For Respondent, Shearson Lehman Brothers, Inc. ("Respondent"), Richelle Kennedy, Esq. from the law of firm Bingham, Dana & Gould.

CASE INFORMATION

Statement of Claim filed on May 11, 1992.

Claimant's Submission Agreement signed on May 8, 1992.

Respondents' Statement of Answer was filed on June 26, 1992.

Respondents' Submission Agreement was signed on July 1, 1992.

HEARING INFORMATION

Hearing Date/Session: December 15, 1992 - One Session.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at, 260 Franklin Street, Boston, Massachusetts.

### CASE SUMMARY

Claimant alleges that Respondent was the lead manager of an offering of Index Laboratories common stock. Claimant alleges that he wanted to purchase 2000 shares of Index but was told that it was over-subscribed and that only 1000 shares were available. Claimant states that he placed an order for 1000 shares and subsequent to the purchase order, one of Respondent's representatives informed him that 2000 shares were now available. Claimant alleges that he changed his order from 1000 shares to 2000 shares at the offering price. Claimant maintains that Respondent confirmed that the 2000 shares were allocated to Claimant and that Claimant would receive the shares and an invoice for the purchase price. Claimant further alleges that he did not receive the shares or the invoice and was later advised by Respondent that there was no record of the allocation of shares, offer to purchase or acceptance of the order to purchase the shares.

Claimant states that the offering price was \$16.00 per share, the quoted price on June 27, 1991 was \$14.50 per share and since that time, the price has been as high as \$29.00 per share. Claimant asserts that he has been damaged by the loss of the increased value of the 2000 shares.

Respondent denies the allegations contained in the Statement of Claim and submits that it is not liable to Claimant for any monetary damages. Respondent asserts thirteen affirmative defenses. Specifically, Respondent denies that Claimant had an account or a financial consultant at Respondent's firm. Respondent states that individuals cannot place orders directly with Shearson's Syndicate Department. As a result, Respondent argues that Claimant did not place an order.

Respondent alleges that Claimant was a registered representative and, therefore, knew the procedure for purchasing shares at a securities firm. Respondent states that Claimant waited five months before contacting the Syndication Department to inquire about his order. Respondent maintains that any alleged loss was due to Claimant's misfeasance.

### RELIEF REQUESTED

Claimant requests an award of \$26,000.00 plus interest, costs and such other and further relief as the arbitrator deems appropriate.

Respondent request that the Statement of Claim be dismissed in its entirety and that the arbitrator award Respondent costs and attorney's fees.

### OTHER ISSUES CONSIDERED & DECIDED

Claimant made a Motion in Limine dated November 20, 1992, to bar Respondent from

presenting evidence contesting the claim based upon Respondent's failure to produce documents requested by Claimant. By letter dated November 30, 1992. Respondent filed an objection and stated that all relevant documents in its possession were sent to Claimant and that it will comply with the Order of Production as provided in the Order by December 2, 1992. This arbitrator denied the motion after hearing arguments.

### 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. Respondent is hereby liable and shall pay Claimant the sum of **SIXTEEN THOUSAND DOLLARS AND ZERO CENTS (\$16,000.00)**.
2. The claim for interest and costs is denied.


### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed and shall be borne equally by the parties.

\$100.00 - non-refundable filing fee.  
\$300.00 - one hearing session.

1. Claimant paid \$400.00 and is entitled to a refund of \$200.00.
2. Respondent shall reimburse Claimant \$200.00.

Concurring Arbitrator Signature



Peter M. Saparoff, Esq.  
Sole Public Arbitrator

Date of Decision: January 20, 1993