

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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PUBLIC

In the Matter of the Arbitration Between

Name of Claimant(s)

Barbara Acton Jones

92-01795

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
James Toto

REPRESENTATION

For Claimant Barbara Acton Jones: Walter V. Hines, Esq., sole practitioner.

For Respondents Shearson Lehman Brothers, Inc. and James Toto: Robert S. Manoff, Esq. of Schwartz, Tobia & Stanziale.

CASE INFORMATION

Statement of Claim filed: May 29, 1992.

Claimant's Submission Agreement signed on: May 21, 1992.

Amended Statement of Claim filed: June 4, 1992.

Claimant's Reply to Respondents Motion to Dismiss under Section 15 filed on: August 6, 1992.

Joint Statement of Answer and Motion to Dismiss under Section 15 filed by Respondents Shearson Lehman Brothers, Inc. and James Toto on: July 17, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: July 2, 1992.

Respondent James Toto's Submission Agreement signed on: July 9, 1992.

Respondents' Response to Claimant's Reply to Respondents Motion to Dismiss under Section 15 filed on: August 25, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: June 15, 1993 / Two Sessions
June 16, 1993 / One Session

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

CASE SUMMARY

Claimant alleged that from 1982 she had two accounts with Respondent Shearson Lehman Brothers, Inc. and has been a client of Respondent Toto, when he was employed by Seaboard Planning and continued as a client when he was employed by Respondent Shearson Lehman Brothers, Inc. Claimant further alleged that Respondent Toto invested Claimant's savings in unsuitable, speculative and penny stocks, which were only appropriate for sophisticated and wealthy investors after proper disclosure. Claimant further alleged that at one time Respondent Toto convinced Claimant to withdraw funds at a penalty from a bank IRA account paying 9-1/2% interest to finance Respondent Toto's purchase of speculative stocks. Claimant contended that during the time of active investment of the accounts, Respondent Toto completely controlled the accounts and during certain periods of time he excessively traded the accounts for the purpose of generating commissions. Claimant alleged that Respondents have violated the fiduciary relationship between the parties, been grossly negligent, committed common law fraud and malpractice and violated Section 2, Article III of the NASD manual. Claimant further alleged that some trades have taken place in 1991; therefore, under the "continuous treatment" doctrine, the applicable statute of limitation is tolled until 1991.

Respondents maintained that Claimant was actively and studiously involved in the investments in her accounts and she was fully apprised of the character and nature of the investments and closely followed her accounts. Respondents further maintained that Claimant was fully aware of the speculative nature and risks associated with the securities in question and willingly undertook the risk in order to seek a greater return on her investment.

RELIEF REQUESTED

Claimant requested \$43,053.24 in compensatory damages, attorney and expert witness fees and punitive damages.

Respondents requested all claims be dismissed in their entirety.

OTHER ISSUES

The Director of Arbitration denied Respondents' Motion to Dismiss under Section 15 of the NASD Code of Arbitration Procedure on October 13, 1992.

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. All claims by Claimant be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs.

FORUM FEES

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

3 sessions x \$400.00 = \$1,200.00 less \$400.00 hearing session deposit =
\$800.00 net due.


Forum fees Assessed Against:

Claimant be and hereby is liable and shall pay the NASD the sum of \$800.00 to represent forum fees.

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

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CONCURRING ARBITRATORS' SIGNATURE



George R. Freund
Public Arbitrator

STATE OF: *New Jersey*

SS:

COUNTY OF: *Union*

On this *1st* day of *July*, 1993, before me personally appeared **George R. Freund** 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.

Diana M. Pallante

DIANA M. PALLANTE
NOTARY PUBLIC
My Commission Expires 12/17/95

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Theodore Moreines** 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 **Hilary B. Miller, 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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CONCURRING ARBITRATORS' SIGNATURE

George R. Freund
Public Arbitrator

Theodore Moreines
Industry Arbitrator



Hilary B. Miller, Esq.
Public Arbitrator

APPEARED UNDER PENALTY OF
PERJURY PURSUANT TO U.P.R. § 4-106

STATE OF

New York

S.S.:

COUNTY OF

New York

On this 7 day of July, 1993 before me personally appeared Hillary Miller 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.


Neil Orlot

MARK O. GLUT
Notary Public, State of New York
No. 4905193
Qualified in Queens County
Commission Expires April 20, 1994

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CONCURRING ARBITRATORS' SIGNATURE

George R. Freund
Public Arbitrator



Theodore Moreines
Industry Arbitrator

Hilary B. Miller, Esq.
Public Arbitrator

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **George R. Freund** 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: *Brock*

On this *5* day of *July*, 1993, before me personally appeared **Theodore Moreines**
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.

Rose Ann Ruggiero
ROSE ANN RUGGIERO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 22, 1997

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Hilary B. Miller, 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.