

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Samuel Lorber

PUBLIC

92-01852

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
Cary Sprung

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**REPRESENTATION**

For Claimant Samuel Lorber: Jack Balan, Esq. sole practitioner.

For Respondents Shearson Lehman Brothers, Inc. and Cary Sprung: John E. Jenkins, Esq., in-house counsel at Shearson Lehman Brothers, Inc.

**CASE INFORMATION**

Statement of Claim filed: August 5, 1992.

Claimant's Submission Agreement signed on: May 27, 1992.

Joint Statement of Answer filed by Respondents Shearson Lehman Brothers, Inc. and Cary Sprung on: October 5, 1992.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: October 1, 1992.

Amended Statement of Answer and Motion to Dismiss filed by Respondents Shearson Lehman Brothers, Inc. and Cary Sprung on: April 23, 1993.

Respondent Cary Sprung did not file a Submission Agreement as required by Sections 1 and 12 of the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Session: April 28, 1993 / Two Sessions

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

**CASE SUMMARY**

Claimant alleged he told Respondent Cary Sprung, a broker at Respondent Shearson Lehman Brothers, Inc., in July and August of 1989 to take him out of margin accounts and transactions. however, in contravention of this order Respondent Cary Sprung bought Ryder System stock time and again on margin. Claimant alleged that Respondent Cary Sprung violated the express orders of Claimant by continuing the practice of utilizing margin purchases. Claimant contended that as a direct result of improper placement of Claimant in these margin accounts and an almost simultaneous market decline Claimant was exposed to urgent margin calls he could not honor.

Respondents maintained that Claimant established himself as a sophisticated investor before opening an account with Respondents. Respondents further maintained that Claimant did not give an order to eliminate the margin balance, and if he did it could not be carried out because the elimination of a margin balance requires either a deposit or the sale of securities from the account to raise the cash to pay off the margin balance and this was never ordered or even suggested by Claimant. Respondents further maintained the purchase of Ryder System on margin was authorized.

**RELIEF REQUESTED**

Claimant requested \$95,904.00 in compensatory damages.

Respondents requested all claims be dismissed and attorneys' fees, and costs.

**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 its own costs including attorneys' fees.

**FORUM FEES**

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

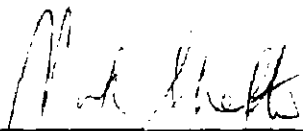
2 sessions x \$500.00 = \$1,000.00 less \$500.00 hearing session deposit = \$500.00 net due.

Forum Fees Assessed Against:

Claimant be and hereby is liable and shall pay the NASD the sum of \$500.00 to represent forum fees.

The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit previously deposited by Claimant.

**ARBITRATORS' SIGNATURE**

  
\_\_\_\_\_  
Marks D. Shefts  
Industry Arbitrator

Decision Dated: June 2, 1993

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **Melvin Lyon** 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.

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STATE OF: *N.Y.*

SS:

COUNTY OF: *ORANGE*

On this *20<sup>th</sup>* day of *May*, 1993, before me personally appeared **Marks D. Shefts** 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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STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **Marc L. Ripp, 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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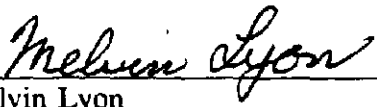
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**ARBITRATORS' SIGNATURE**

  
\_\_\_\_\_  
Melvin Lyon  
Public Arbitrator

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Marks D. Shefts  
Industry Arbitrator

\_\_\_\_\_  
Marc L. Ripp, Esq.  
Public Arbitrator

Decision Dated: June 2, 1993

STATE OF: *New Jersey*

SS:

COUNTY OF: *BERGEN*

On this *17* day of *MAY*, 1993, before me personally appeared **Melvin Lyon** 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.

*Arthur Fisher*

ARTHUR FISHER  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires April 27, 1997

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **Marks D. Shefts** 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:

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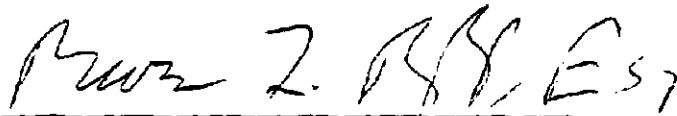
**ARBITRATORS' SIGNATURE**

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Melvin Lyon  
Public Arbitrator

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Marks D. Shefts  
Industry Arbitrator

  
\_\_\_\_\_  
Marc L. Ripp, Esq.  
Public Arbitrator

Decision Dated: June 2, 1993

STATE OF:

SS:

COUNTY OF:

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STATE OF:

SS:

COUNTY OF:

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STATE OF: *New Jersey*

SS:

COUNTY OF: *Essex*

On this *12<sup>th</sup>* day of *May*, 1993, before me personally appeared **Marc L. Ripp, 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.

*Carol L. Buzzardi*

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CAROL L. BUZZARDI  
A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 3, 1995