

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

u/w/o Ronald B. Goodman ttee  
f/b/o Lambertus R. P. Schoonheim  
Ryk & Doireann Schoonheim

92-02177

**Name of Respondents**

Shearson Lehman Brothers, Inc.  
Mark Drucker

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**REPRESENTATION**

For Claimant: Philip T. Simpson, Esq. of the law firm of Robinson Brog Leinwand Reich Genovese & Gluck P.C.

For Respondents: Shearson Lehman Brothers, Inc. and Mark Drucker Edward N. Gioiella, Esq. and James T. Meyer, Esq.

**CASE INFORMATION**

Statement of Claim filed: June 30, 1992.

Claimant's Submission Agreement signed on: June 15, 1992.

Joint Statement of Answer and Counterclaim of Respondent Shearson Lehman Brothers, Inc. filed by Respondents Shearson Lehman Brothers, Inc. and Mark Druckner on: September 1, 1992.

Submission Agreement of Respondent Shearson Lehman Brothers, Inc. acknowledged on: August 31, 1992.

Submission Agreement of Respondent Mark Druckner acknowledge on: September 14, 1992.

Claimants Reply to Counterclaim dated: September 14, 1992.

### **HEARING INFORMATION**

Hearing Dates/Sessions:    March 15, 1993 /1 Session  
                                     April 27 1993/2 Sessions  
                                     April 28, 1993/2 Sessions

Hearing Location: NASD offices located at 33 Whitehall Street, New York City

### **CASE SUMMARY**

Claimants allege that Respondents traded in securities for their respective trust accounts without authorization for such trades and in direct conflict with instructions made by Claimants pertaining to the investment options for said accounts. Specifically, Respondent Mark Drucker made two purchases of Fannie Mae (FNMA) bonds, each for the price of \$450,000.00 and with maturities of 14 and 30 years for the first and second transactions, respectively. Claimant alleged that Respondent had specifically been instructed that no investment could be made for a period of over six years and that mortgage-backed securities of the Fannie Mae (FNMA) or Ginnie Mae (GNMA) varieties were to be avoided. Claimants alleged that the trusts suffered a combined loss of \$13,368.02 as a result of reversing the unauthorized trades.

Respondents alleged that Mark Drucker discussed all investment ideas extensively before any trades were entered into, insuring the claimants fully understood the investments. Respondents categorically denied that investments in Fannie Mae's or Ginnie Mae's were forbidden as the Trustees knew, or should have known, that the authorized investments in CMO's would involve transactions with Fannie Mae's and/or Ginnie Mae's. Respondents further maintained that, although the 6 year parameter initially existed, it was specifically waived by the trustee when market conditions made such waiver prudent. As a result Respondents argued, the trading loss of \$3,608.42 amended to \$13,728.42, should be borne by the Claimants, and counterclaim for return of this money to the account of Respondent Shearson Lehman Brothers, Inc.

### **RELIEF REQUESTED**

Claimants requested that they be awarded Actual/Compensatory damages of \$13,368.02 in recoupment of the trade loss. In addition, Claimants sought \$40,104.06 in treble damages, as well as counsel fees and interest, and costs and disbursements.

Respondents requested that the panel deny and thereafter dismiss the Claimants' claim in its entirety. In addition, Respondent, Shearson, requested an award of \$13,608.02 amended to \$13,728.42 plus interest. Respondents also requested costs and counsel fees incurred for this matter.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims against the Respondents are dismissed in their entirety.
2. Counterclaim is granted against claimants accordingly:
3. Shearson Lehman Brothers, Inc. is to recover \$6,864.21 from Martina Schoonheim and Ronald Goodman as trustees for the benefit of Ryk Schoonheim.
4. Shearson Lehman Brothers, Inc. is to recover \$6,864.21 from Martina Schoonheim and Ronald Goodman for the benefit of Doireann Schoonheim.
5. Interest is awarded to Shearson Lehman Brothers, Inc. from March 5, 1992, at the legal rate until the award is paid in full.
6. The cost of this proceeding shall be paid for by the Claimants.
7. There will be no postponement fee associated with the April 27, 1993 adjournment.

### **FORUM FEES**

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

\$500.00 non-refundable filing fee for Counterclaim.

\$150.00 non-refundable filing fee for claim.

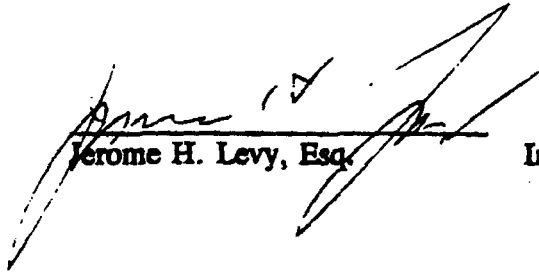
Hearing Session Fees: \$500.00 x 4 Sessions = \$2,000.00

1. Claimant shall pay the NASD the sum of \$2,650.00 representing all forum fees associated with this arbitration. This amount is to be off-set by the \$500.00 initial hearing session deposit already deposited and the \$150.00 non-refundable filing fee already deposited.
2. Claimant shall reimburse Respondent \$1,100.00, representing the \$600.00 initial hearing session deposit and the \$500.00 filing fee for the counterclaim. Net due to the NASD: \$900.00

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

Concurring arbitrators's Signatures

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Romeo J. Barros, Esq.                      Public

  
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Jerome H. Levy, Esq.                      Industry

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Robert Pincus, Esq.                      Public

Date of Decision: September 10, 1993

\$500.00 non-refundable filing fee for Counterclaim.

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Hearing Session Fees: \$500.00 x 4 Sessions = \$2,000.00

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\_\_\_\_\_  
Romeo J. Barnes, Esq.                      Public

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Jerome H. Levy, Esq.                      Industry

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Robert Pincus, Esq.                      Public

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