

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Calvin R. Swinson

92-02300

Name of Respondents

Shearson Lehman Brothers, Inc.  
Peter Middlekauf  
Linda Drummond

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on July 13, 1992, Claimant Calvin R. Swinson, who appeared Pro Se, alleged that Respondent Shearson Lehman Brothers, Inc., through its registered representative, Respondent Peter Middlekauf, misrepresented the selling policy of a security he purchased through initial public offering, Sphinx Pharmaceutical Corp. The Claimant also alleged that the Respondents prevented him from selling the stock on its opening and for the next seven days and delayed in delivering of the stock to him, causing a loss for which he should be compensated.

Respondents, Shearson Lehman Brothers, Inc., Peter Middlekauf and Linda Drummond, through their in-house counsel, John P. Bevilacqua, Esq., maintained that they acted at all times in a professional and ethical manner and in accord with all exchange and governmental regulations, and that although it was internal policy not to sell shares bought at an initial public offering until settlement date, if the Claimant requested the stock be sold, the Respondents would have done so. The Respondents further maintained that the Claimant was offered a settlement in this matter for what they believed would make him whole, but he refused and chose to hold onto the position.

**RELIEF REQUESTED**

Claimant Calvin R. Swinson requested \$7,500.00 in actual damages, plus costs.

Respondents Shearson Lehman Brothers, Inc., Peter Middlekauf and Linda Drummond requested the claims of the Claimant be dismissed.

### **AWARD**

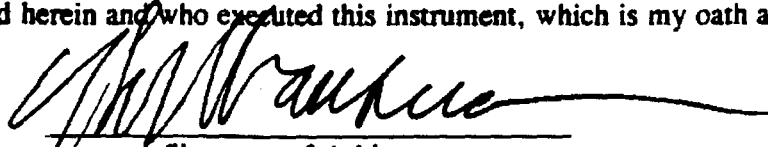
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Kenneth G. Hausman, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 7, 1992, by the Respondent Shearson Lehman Brothers, Inc. on September 21, 1992, but not signed by Respondents Peter Middlekauf and Linda Drummond 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. Respondents Shearson Lehman Brothers, Inc., Peter Middlekauf and Linda Drummond are jointly and severally liable and shall pay to Claimant Calvin R. Swinson \$250.00 in actual damages, plus interest at the rate of 10% per annum from January 23, 1992 to the date of payment of this award.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

### **AFFIRMATION**

I, **KENNETH G. HAUSMAN**, 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.



Signature of Arbitrator

DATE OF DECISION: MARCH 9, 1993