

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

David L. Rice

Lois E. Rice

NASD Arbitration  
No.92-03781

Name of Respondents

Shearson Lehman Brothers, Inc.

Dan Schmiech

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REPRESENTATION

For Claimants: Robert A. Uhl, Esq., Aidikoff & Kesluk, Los Angeles, California

For Respondents: Michael Gless, Esq., Keesal, Young & Logan, Long Beach, California

CASE INFORMATION

Statement of Claim filed: November 5, 1992

Claimants' Submission Agreement signed: October 27, 1992

Joint Statement of Answer filed by Respondents: January 28, 1993

Respondents' Submission Agreements signed

Shearson Lehman Brothers: April 21, 1993

Dan Schmiech: April 5, 1993

HEARING INFORMATION

Hearing Dates / Sessions: March 30, 1994 - 3 sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants alleged churning, lack of suitability, breach of fiduciary duty, fraud, negligence, failure to supervise and violations of federal securities laws and NASD and NYSE

rules with respect to investments in common stocks purchased on margin and options trading.

Respondents denied the allegations, and asserted the Claimants were fully informed of the risks of all their investments, that Claimants were suitable for options and margin trading and that Claimant David Rice was an experienced investor who approved all transactions.

### **RELIEF REQUESTED**

Claimants requested general and compensatory damages of not less than \$64,423, plus commissions paid of not less than \$40,000, margin interest paid, lost opportunity costs, interest, punitive damages, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

### **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, including the claim for punitive damages, are dismissed in their entirety.
2. The parties shall each bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$250 non-refundable filing fee previously paid by Claimant. In addition, forum fees are assessed as follows:

Total forum fees:		
3 sessions @ \$1,000 / session	-	<u>\$3,000.00</u>
Claimant's one-half share	-	\$1,500.00
<u>Credit for deposit</u>	-	<u>\$1,000.00</u>
Balance due	-	<u>\$500.00</u>

Respondent Shearson's one-half share

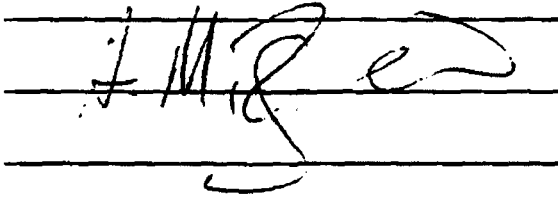
= \$1,500.00

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

**ARBITRATORS**

<u>Name</u> .....	<u>Public / Industry</u>
Elliott Finkel	Public Chairperson
Andrew M. Zanger	Public Panelist
Andrew J. Sorensen	Industry Panelist

**Concurring Arbitrators' Signatures**

A handwritten signature, likely of Elliott Finkel, is written on three horizontal lines. The signature is stylized and cursive.

Date of Decision:

Served 4/22/94