

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

ROBERT M. K. FLECK and
JANE ALLISON FLECK,

Claimants,

v.

NASD No. 92-4312

SHEARSON LEHMAN BROTHERS
and DAN MELLIS,

Respondents.

Representation

For Claimant: Bruce Safran, Esq., Sherman Oaks, CA

For Respondent Shearson Lehman Brothers: Timothy Will, Esq., of Keesal, Young & Logan,
Long Beach, CA

For Respondent Dan Mellis: Dan Mellis

Case Information

Statement of Claim filed: December 11, 1992

Claimant's Submission Agreement signed: November 18, 1992

Statement of Answer filed on: Shearson Lehman Brothers on February 23, 1993.
Respondent Dan Mellis, although duly served, did not file an Answer or appear at the
hearing.

Respondents' Submission Agreement signed on: Shearson Lehman Brothers on April 19,
1993. Dan Mellis, although duly served, did not file a submission agreement but is subject to
the jurisdiction of the National Association of Securities Dealers, Inc. in accordance with
Code of Arbitration Procedure Section 12.

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: April 12, 1994/one, July 19, 1994/two, July 20, 1994/two, July 26, 1994/three

Hearing Location: Los Angeles, CA

Case Summary

Claimant alleged:

Misrepresentation regarding the trading of commodities in claimants' account, violation of Sections 10(B) and 20 of the Securities Exchange Act of 1934 and Rule 10B-5 of the Securities Exchange Commission, intentional and negligent misrepresentation, breach of fiduciary duty and breach of implied covenant of good faith and fair dealing, breach of written contract, violation of New York Stock Exchange Rules and National Association of Securities Dealers Rules of Fair Practice.

Respondent Shearson Lehman Brothers (hereinafter, Shearson) alleged:

Shearson merely acted as claimants' clearing agent. Respondent Dan Mellis (hereinafter, Mellis) placed all trades for the Flecks' account directly through the New York trading desk. Claimants opened a commodity account with Mellis who is not associated with Shearson. Mellis chose to process his trades through Shearson and the Flecks opened a Shearson account. After approximately two weeks of trading at Shearson, the account suffered relatively large losses in one day and was closed pursuant to the claimants' instructions. Neither Shearson nor any of its agents ever gave any advice or input regarding any of the Flecks' trades.

Respondent Shearson filed a cross-claim against respondent Dan Mellis and Mellis Associates for indemnity and contribution. No Answer was filed by either Dan Mellis or Mellis Associates.

Relief Requested

Claimant requested:

1. Loss of equity damages of \$60,000;
2. Punitive damages against respondent Dan Mellis;
3. Attorney's fees, interest, costs and disbursements;

4. Such further relief as deemed appropriate.

Respondent Shearson Lehman Brothers requested:

1. Indemnity from respondent Mellis for all sums which Shearson may be compelled to pay as a result of any damages, judgment, settlement or other recovery by claimants;
2. Contribution from respondent Mellis in the amount of his pro-rata share of any judgment recovered by claimants from Shearson according to the proportionate fault of Mellis;
3. Attorneys's fees;
4. Costs of suit; and
5. For such further relief as deemed proper.

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 originals remain 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. Respondents Shearson Lehman Brothers and Dan Mellis are jointly and severally liable for and shall pay claimants the sum of \$23,284.60, plus interest of \$4,656.80;
2. Respondent Dan Mellis, only, is liable for and shall pay claimants the sum of \$36,715.40, plus interest of \$7,343.08;
3. The claim for punitive damages is dismissed;
4. Respondent Shearson Lehman Brothers' cross-claim for indemnity and contribution is dismissed;
5. The parties shall each bear their respective attorney's fees;
6. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$500 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Claimants, jointly and severally, for \$2,000, minus \$500 paid as a hearing deposit, leaving a balance due of \$1,500, and

Respondents, jointly and severally, for 2,000,

calculated as follows: eight hearing sessions at \$500/hearing session, equals \$4,000, minus \$500 already paid by the claimant as a hearing deposit.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Howard Gaines	Public
Lionel Heller	Public
John DeRosa	Industry

Concurring Arbitrators' Signatures

Howard Gaines



Lionel Heller

John DeRosa

Date of Decision: