

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Michael Litt and Linda Kahn

vs.

Case #  
92-04360

Name of Respondents

Shearson Lehman Brothers, Inc.  
Baird, Patrick & Co., Inc.

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**REPRESENTATION**

For Claimants, Michael Litt and Linda Kahn ("Claimants"), David Hirschberg, Esq., from the law firm of Wexler & Burkhard, P.C.

For Respondent Shearson Lehman Brothers, Inc. ("Shearson"), Lisa Cerasia, Esq., in-house counsel.

For Respondent Baird, Patrick & Co., Inc. ("Baird, Patrick"), Jeffrey P. Flynn, Esq. from the law firm of Crummy, DelDeo, Dolan, Griffinger, et al.

**CASE INFORMATION**

Statement of Claim filed was filed on December 29, 1992.

Claimants' Submission Agreement was signed on November 30, 1992.

Statement of Answer was filed by Shearson on March 11, 1993.

Statement of Answer was filed by Baird, Patrick on February 26, 1993.

Motion to Dismiss was filed by Shearson on September 21, 1993.

Claimants' Response to Motion to Dismiss was filed on September 27, 1993.

## HEARING INFORMATION

Hearing Dates/Hearing Sessions: September 29, 1993 - two sessions  
September 30, 1993 - two sessions

## CASE SUMMARY

Claimants, adult children and co-executors of the estate of Ruth Kleiman, commenced this action to recover damages sustained from unsuitable trades in accounts maintained and serviced at Shearson and Baird Patrick (collectively "Respondents"). Claimants state that they were joint tenants with Ms. Kleiman on the accounts. Claimants allege that at the time of these unsuitable trades which resulted in losses in excess of \$155,000.00 and commissions to the brokers in excess of \$65,000.00, Ms. Kleiman was an elderly widow in poor health. Claimants also allege that Respondents violated their fiduciary duty to Ms. Kleiman by failing to dissuade her from engaging in or by soliciting trades in high-risk investment vehicles such as commodities and options. Claimants further allege that although they were joint tenants on the accounts they did not sign any account agreements. Claimants argue that Respondents violated Sections 2 and 27 of the NASD Rules of Fair Practice.

Shearson denies each and every allegation contained in the Statement of Claim and denies liability. Shearson maintains that Ms. Kleiman was a knowledgeable, sophisticated and wealthy investor who enjoyed gambling and knowingly and willingly assumed all risks in her accounts. Shearson argues that this arbitration claim is an attempt by Claimants to recoup losses resulting from their mother's voluntary exposure to market fluctuation.

Shearson contends that Ms. Kleiman was a wealthy woman whose husband had set up a trust account in excess of one million dollars in municipal bonds which provided her with approximately \$100,000.00 in tax-free income. Said Respondents states that Ms. Kleiman's investment objectives included appreciation, safety and that her early activities included such conservative investments as two \$200,000.00 tax-deferred annuities for the benefit of her children and a \$100,000.00 municipal bond fund. Shearson also states that over time, Ms. Kleiman became a more aggressive investor and her new account documents were updated in accordance with her evolving investment objectives to reflect appreciation of risk, speculative and income with safety.

Shearson maintains that Claimants were aware of the nature of the activity in their mother's account because limited partnership interest in Balcro Equity Properties, Ltd., Eastpoint Mall Limited Partnership, Commercial Development Fund 85 and

Koger Partnership Ltd. Shearson also maintains that both Claimants signed client agreement for the joint accounts.

Shearson asserts eleven affirmative defenses and argues that the claims relating to trades made prior to December 12, 1986, six years prior to the filing of this claim, is time barred pursuant to Section 15 of the *Code of Arbitration Procedure*.

Baird Patrick denies all allegations and asserts seven affirmative defenses. Respondent states that all trades were in accordance with Ms. Kleiman's objectives and were authorized by her. Said Respondent maintains that the investments were suitable.

### **RELIEF REQUESTED**

Claimants request an award of \$115,674.92 against Shearson, \$41,151.31 against Baird Patrick, interest at New York statutory rate of nine percent per annum from the date of the trades, reasonable attorneys' fees, costs and disbursements incurred in connection with this arbitration.

Respondents request that the Statement of Claim be dismissed. Baird Patrick requests an award of attorneys' fees, interest and costs and all such other relief as the arbitration panel deems just and proper.

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

By letter dated September 20, 1993, Shearson moved to dismiss or limit proof pursuant to Section 25 of the *Code*, because Claimants have not come forward with any competent evidence in support of their claim. Alternatively, Shearson requests that Claimants be precluded from submitting any evidence regarding Ms. Kleiman's investment objectives. Claimants in their response dated September 24, 1993 oppose the "purported motion" and state that it is frivolous and contrary to the *Code*.

This panel reserved discussion on this Motion. Subsequent to the conclusion of Claimants' case, Respondents moved to dismiss the Statement of Claim. After deliberation, this panel granted the motion.

### **AWARD**

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

- 1) Respondents' Motion to Dismiss all claims asserted by Claimants is granted.
- 2) All other claims for relief are denied.

### FORUM FEES

Pursuant to Section 43(c) of the *Code*, the following forum fees are assessed against Claimants:

Non-refundable Filing Fee: \$200.00  
Hearing Session Fees: \$750.00 x 4 sessions = \$3,000.00

Claimants previously paid \$950.00 and owe a balance of \$2,250.00

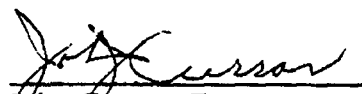
Fees are payable to the National Association of Securities Dealers, Inc.

### ARBITRATION PANEL

James P. O'Neill, Esq.  
John Curran, Esq.  
Lotte Fields

Public Chairperson  
Industry Panelist  
Public Panelist

Concurring Arbitrator's Signature

  
John Curran, Esq.

Date of Decision: November 5, 1993

*Connecticut*  
STATE OF ~~NEW YORK~~  
COUNTY OF *Fairfield*

s.s.: *W. H. H.*

On this *30<sup>th</sup>* day of October, 1993, before me personally appeared John Curran, Esq. who executed the foregoing instrument and duly acknowledged to me that he executed the same.

  
MY COMMISSION EXPIRES  
MARCH 31, 1995.

### FORUM FEES

Pursuant to Section 43(c) of the *Code*, the following forum fees are assessed against Claimants:

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

### ARBITRATION PANEL

James P. O'Neill, Esq.  
John Curran, Esq.  
Lotte Fields

Public Chairperson  
Industry Panelist  
Public Panelist

Concurring Arbitrator's Signature

Lotte Fields  
Lotte Fields

Date of Decision: November 5, 1993

STATE OF NEW YORK  
COUNTY OF NEW YORK

S.S.:

On this 3 day of NOV, 1993, before me personally appeared Lotte Fields who executed the foregoing instrument and duly acknowledged to me that he executed the same.

Howard Londa

**HOWARD LONDA**  
Notary Public, State of New York  
No. 7589235  
Qualified in Rockland County  
Certified in New York County  
Commission Expires June 30, 1994

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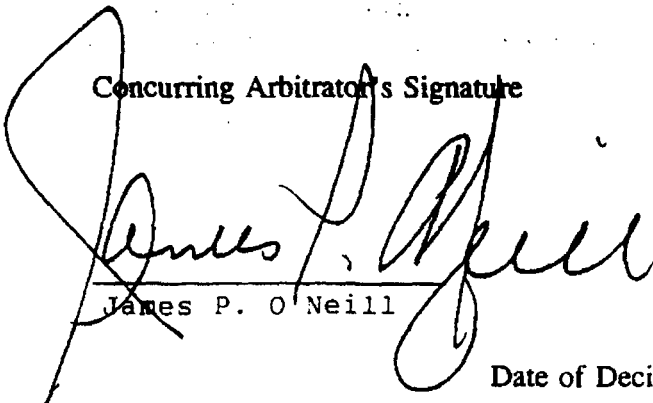
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### ARBITRATION PANEL

James P. O'Neill, Esq.  
John Curran, Esq.  
Lotte Fields

Public Chairperson  
Industry Panelist  
Public Panelist

Concurring Arbitrator's Signature




James P. O'Neill

Date of Decision: November 5, 1993

STATE OF NEW YORK  
COUNTY OF New York

S.S.:

On this 1st day of November, 1993, before me personally appeared James P. O'Neill, Esq. who executed the foregoing instrument and duly acknowledged to me that he executed the same.



VIRGINIA T. ALASIO  
Notary Public, State of New York  
No. 31-4952376  
Qualified in New York County  
Commission Expires June 19, 1995