

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Adele and Marvin Hirsch

93-00127

Name of Respondents

Shearson Lehman Brothers, Inc.
Sean M. Sweeney
Alexander I. Dever, Jr.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 12, 1993, Claimants Adele and Marvin Hirsch, who appeared Pro Se, alleged that Respondents Shearson Lehman Brothers, Inc., Sean M. Sweeney and Alexander I. Dever, Jr. failed to execute a timely purchase order which necessitated a subsequent purchase at increased cost. Claimants further alleged that on September 15, 1992 Respondent Sean M. Sweeney, a representative of Respondent Shearson Lehman Brothers, Inc. phoned to offer them an initial purchase offer of Enterprise Oil B, preferred stock at \$25.00 a share whereby, Claimants ordered 200 shares. Claimants contended that on September 18, 1992, not having received a confirmation of the purchase, Claimants phoned Respondent Sean M. Sweeney and in his absence; they spoke to a Mr. Fitzpatrick who told them the stock was available at \$25.50 per share, whereby Claimants told him to put 200 shares in the account. Claimants further alleged that on September 29, 1992 Claimant Marvin Hirsch had a three way conversation with Respondent Sean Sweeney and Respondent Alexander I. Dever, Jr., Vice President of Respondent Shearson Lehman Brothers, Inc. where Respondent Sean Sweeney denied Claimants ordered the stock when Respondent Sean Sweeney first spoke to Claimants. Claimants further contended that because of Respondents' actions they had lost \$103.85 plus costs in their account.

Respondents Shearson Lehman Brothers, Inc., Sean Sweeney and Alexander I. Dever, Jr., by and through their in-house counsel, John P. Bevilacqua, Esq., maintained that on September 17, 1992 Respondent Sean Sweeney telephoned Claimants Adele and Marvin Hirsch in order to discuss an investment opportunity in Enterprise, at which time, Claimants indicated that they

may be interested at \$25.00 a share whereby, on September 21, 1992, Respondent Sean Sweeney telephoned Claimants and Claimants were not prepared to make a decision. Respondents further maintained, as evidenced in Respondent Sean Sweeney's notes, which were taken contemporaneously with his conversations with Claimants, it is clear that Claimants did not authorize the purchase until September 28, 1992.

RELIEF REQUESTED

Claimants Adele and Marvin Hirsch requested \$103.85 in actual damages plus reimbursement of the NASD filing fee and costs.

Respondents Shearson Lehman Brothers, Inc., Sean Sweeney and Alexander I. Dever, Jr. requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert F. Sanville, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 6, 1993, by the Respondent Shearson Lehman Brothers, Inc. on March 9, 1993 and by the Respondents Sean Sweeney and Alexander I. Dever, Jr. on March 10, 1993.

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. and Sean Sweeney are jointly and severally liable and shall pay to the Claimants Adele and Marvin Hirsch the sum of \$103.85 in damages.
2. The claim of Claimants Adele and Marvin Hirsch against Respondent Alexander I. Dever, Jr. is dismissed.
3. The parties shall bear their respective costs.
4. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Adele and Marvin Hirsch shall be retained by the NASD, Inc. Respondents Shearson Lehman Brothers, Inc. and Sean Sweeney are jointly and severally liable and shall pay to the Claimants the sum of \$30.00, as reimbursement.

AFFIRMATION

I, **ROBERT F. SANVILLE**, 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: June 23, 1993