

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Vincent Marchese

93-00159

Name of Respondents

Shearson Lehman Brothers, Inc.  
Vincent Wynne  
Craig T. Muff

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**REPRESENTATION**

Claimant Vincent Marchese ("Claimant") was represented by Myron G. Lappen, Attorney at Law.

Respondents Shearson Lehman Brothers, Inc. (n.k.a. Smith Barney Shearson, Inc.), Vincent Wynne and Craig T. Muff were represented by Pauline C. Scavino, Esq., of the law firm of Stradley, Ronon, Stevens & Young.

**CASE INFORMATION**

Statement of Claim filed on: January 14, 1993.

Claimant's Submission Agreement signed on: January 12, 1993.

Joint Statement of Answer filed on: March 9, 1993.

Respondent Shearson Lehman Brothers, Inc.'s ("Shearson") Submission Agreement signed on: February 10, 1993.

Respondent Vincent Wynne's ("Wynne") Submission Agreement signed on: February 18, 1993.

Respondent Craig T. Muff's ("Muff") Submission Agreement signed on: February 18, 1993.

### **HEARING INFORMATION**

Hearing Dates/Sessions: Monday, February 14, 1994, 2 sessions.

Hearing Location: NASD Office, Philadelphia, PA.

### **CASE SUMMARY**

Claimant alleged that he had an account with Respondents which was set up as a discretionary account. Claimant alleged that he had given discretion but that they had established a practice that Wynne would confirm all transactions that he made on Claimant's behalf. Claimant alleged that on August 11, 1992, he had communicated his displeasure to Wynne and that Wynne was told not to execute any further trades on Claimant's behalf until they had a meeting. Claimant alleged that Wynne starting August 24, 1992 made unauthorized transactions in his account. Claimant alleged that Respondents violated their fiduciary duties owed to Claimant; they violated the Pennsylvania and Federal securities statutes; they violated the rules of the National Association of Securities Dealers, Inc.; and, they violated the provisions of the Federal Racketeers Influenced and Corrupt Organization Act. Claimant alleged that Respondents committed negligence and fraud. Claimant alleged that Shearson and Muff failed to supervise Wynne and that they aided and abetted Wynne.

Respondents categorically denied each and every allegation of wrongdoing. Respondents specifically maintained, among other things, that Wynne at all times followed Claimant's instructions and never placed an order in Claimant's account without authority. Wynne maintained that he always confirmed trades with Claimant. Respondents maintained that Claimant did not complain to Wynne about the August 24th transaction. Respondents maintained that Claimant's instructions were followed and that when Claimant asked that Wynne stop trading, the trading ceased.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$16,165.21, interest and attorney's fees.

Respondents requested that Claimant's claim be dismissed in its entirety and that all costs of these proceedings including reasonable attorneys' fees be assessed against Claimant.

### **OTHER ISSUES CONSIDERED & 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. That each and every one of Claimant's claims is denied in its entirety.
2. That the parties shall each bear their own costs, expenses, and attorneys' fees, except as specifically stated herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 hearing sessions x \$400 = \$800

Claimant paid an initial hearing deposit of \$400 so that this amount shall be used to offset the amount of \$800 assessed against him so that \$400 remains due and owing from Claimant.

Page 4.  
Award #93-00159

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

### Concurring Arbitrators' Signatures

**Name**

Public/Industry

/s/  
Barbara A. Ash, Esq.

## Public Arbitrator

          /s/            
**Marc Durant, Esq.**

## Industry Arbitrator

/s/  
Alfred E. Garfinkel

## Public Arbitrator

**NASD Date of Decision: February 16, 1994**