

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Faye Simmons-Hubbard

NASD Arbitration  
No. 93-00333

Name of Respondent(s)

Shearson Lehman Brothers, Inc.  
Perry O. Daboling

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REPRESENTATION

For Claimant: Michael W. Peterkin, Esq., Bend, Oregon and Richard M. Layne, Garvey, Schubert & Barer, Portland, Oregon

For Respondents: Ann Parry, Esq., Smith Barney Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: January 26, 1993

Claimant's Submission Agreement signed: January 27, 1993

Statement of Answer and Motion to Dismiss filed by Respondents: May 14, 1993

Respondents' Submission Agreements signed as follows:

Shearson Lehman Brothers, Inc.: May 17, 1993

Perry O. Daboling: May 18, 1993 and June 4, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): July 18, 1994 (three sessions)

Hearing Location: Portland, Oregon

### CASE SUMMARY

Claimant alleged breach of fiduciary duty, common law fraud and negligent misrepresentation with respect to her investments in various securities.

Respondents denied Claimant's allegations of wrongdoing and alleged that Claimant's investments were suitable. Respondents further alleged that Claimant's account realized a profit of nearly \$50,000.00, in spite of the fact that she withdrew approximately \$161,000.00 in cash during the period in question. Respondents further alleged that any losses that may have been incurred on individual investments in Claimant's account resulted from market forces, not from any wrongdoing on the part of Respondents. Respondents also asserted affirmative defenses.

### RELIEF REQUESTED

Claimant requested judgment against Respondents, jointly and severally, for an amount not less than the sum of:

1. Damages in the amount of \$47,419.00;
2. Punitive damages in an amount not less than Claimant's economic loss;
3. Pre-and-post judgment interest at the highest lawful rate; and
4. Claimant's arbitration costs.

Respondents requested dismissal of Claimant's claims and requested costs and expenses including legal fees.

### OTHER ISSUES CONSIDERED AND DECIDED

During the pleadings stage of the above-captioned matter, the Director of Arbitration reviewed the positions of the parties relative to Respondents' Section 15 Motion to Dismiss with respect to Claimant's UTS Series 3 investment and granted the Motion.

During the hearing the panel reviewed and considered the written and oral positions of the parties regarding Claimant's request to file an Amended Statement of Claim. The panel denied Claimant's request.

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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. The arbitrators find for the Respondents as to Claimant's claims for damages and have determined that Claimant's claims including the claim for punitive damages are dismissed.

2. Respondent Shearson Lehman Brothers, Inc, is solely liable for and shall pay to Claimant the sum of \$1,000.00 for costs advanced, including additional photocopy expenses and expenses relating to charges for securing documentation that had not or could not be furnished by Shearson Lehman Brothers, Inc.

3. The parties shall each bear their respective remaining costs including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$530.00 hearing session deposit previously deposited by the Claimant. Forum fees are to be split between the parties and are calculated as follows:

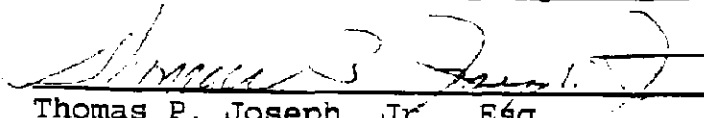
Three hearing sessions @ \$400.00/session	=	\$1,200.00
Total fees assessed	=	\$1,200.00
Claimant's share (50%)	=	\$ 600.00
Credit for hearing deposit	=	\$ 530.00
Balance due	=	\$ 70.00
Respondents' share, jointly and severally	=	\$ 600.00
Balance due	=	\$ 600.00

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

### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Thomas P. Joseph, Jr., Esq.	Public Arbitrator
Nelson Olf	Public Arbitrator
Lee Smith	Industry Arbitrator

Concurring Arbitrators' Signatures

  
Thomas P. Joseph, Jr., Esq.

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Nelson Olf

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Lee Smith

Served 8/24/94

Date of Decision: 

Concurring Arbitrators' Signatures

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Thomas P. Joseph, Jr., Esq.

*Nelson Olf*  
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Nelson Olf

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Lee Smith

Served 8/24/94

Date of Decision: \_\_\_\_\_

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Thomas P. Joseph, Jr., Esq.

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Nelson Olf

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*Lee Smith*  
Lee Smith

Served 8/24/94

Date of Decision: 8/20/94