

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Raymond and Marie Clarke

93-00672

Name of Respondents

Shearson Lehman Brothers, Inc.,  
n/k/a Smith Barney Shearson, Inc.  
Marsha Lee

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1993, Claimants Raymond and Marie Clarke, who appeared Pro Se, alleged that Respondent Shearson Lehman Brothers, Inc., through its registered representative, Respondent Marsha Lee, mishandled their account by randomly buying and selling inappropriate investments such as RJR Nabisco, Walt Disney, Bankamerica Corp., among others, and that in churning their account, she created commissions for herself. The Claimants further alleged that the Respondents failed to ever explain the investment strategies or the statements they received, and that due to the experience Respondent Marsha Lee seemed to have, they put their faith in her. The Claimants contended that Respondent Marsha Lee allowed them to open and utilize a margin account, but failed to explain the ramification of margin calls on the account, and also, they discovered that much of the liquidation that took place in the account was in order to lower the cost of further margin calls, which became more frequent due to the depletion of the account from bad investments and interest payments. Claimants Raymond & Marie Clarke further contended that due to the Respondents' mismanagement of their account, they have incurred losses for which the Respondents should be held liable.

Respondent Marsha Lee, who appeared Pro Se, maintained that the Claimants were known to her to be intelligent, sophisticated individuals and that they understood the risks of the investments they made. She further maintained that the Claimants never conveyed to her that they were unhappy or did not understand what was happening in the account, and that the reason their account depreciated in value was due to the constant withdrawals from the account, even

though the funds were originally invested for long term growth. Respondent Marsha Lee contended that the account was utilized as a "checkbook" and despite all the warnings she gave them that they would lose money if they continued and they would be subject to margin calls, they ignored her concerns and advice and now seek to recover losses that are due to their own mishandling of their account. Respondent Marsha Lee further contended that although they try to give the impression that they were naive and unsophisticated investors, this was not the case, and that she should not be held liable in this matter, since she has committed no wrong.

Respondent Shearson Lehman Brothers, Inc., through its in-house, Ann Parry, Esq., maintained that it acted at all times in a professional and ethical manner and in accordance with all exchange and governmental regulations. The Respondent further maintained that the Claimants are having second thoughts about their decision to handle their accounts like a "checkbook", and that since the Claimants wrote checks in excess of \$16,000.00 and chose to maintain a margin balance which carried interest charges of more than \$8,000.00 during the time the account was with Shearson Lehman Brothers, Inc., it became virtually impossible for Respondent Marsha Lee to rebuild a portfolio which would allow for greater growth than realized. The Respondent contended that it committed no wrong, and therefore, should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimants Raymond & Marie Clarke requested \$10,000.00 in actual damages.

Respondent Shearson Lehman Brothers, Inc. requested the claims of the Claimants be dismissed.

Respondent Marsha Lee requested the claims of the Claimants be dismissed.

### **AWARD**

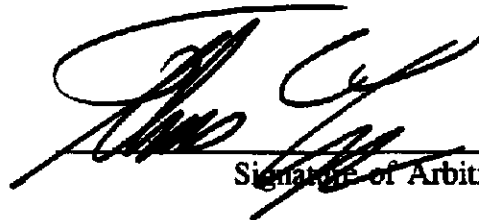
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas E. Higgins, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 17, 1993, by the Respondent Marsha Lee on April 29, 1993, but not by the Respondent Shearson Lehman Brothers, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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 in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Raymond & Marie Clarke against Respondent Shearson Lehman Brothers, Inc. are dismissed in their entirety.
2. The claims of the Claimants Raymond & Marie Clarke against Respondent Marsha Lee are dismissed in their entirety.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **THOMAS E. HIGGINS, ESQ.**, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:** November 1, 1993