

1/96

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Darlene Livingston

93-00770

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant Darlene Livingston ("Claimant") appeared Paul T. Shoemaker, Esq. of the law firm of Greenfield Stein & Senior, LLP located in New York, New York.

For Respondent Shearson Lehman Brothers, Inc. ("Respondent") appeared Pete S. Michaels, Esq., Associate General Counsel of Smith Barney, Inc. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: February 26, 1993.

Claimant's Submission Agreement signed: February 1993.

Statement of Answer filed: June 22, 1993.

Respondent's Submission Agreement signed on: June 22, 1993.

Claimant's Motion to Amend the Statement of Claim filed: October 18, 1994.

Respondent's Response to Claimant's Motion to Amend filed: October 24, 1994.

Claimant's Reply to Respondent's Response to Claimant's Motion to Amend filed: October 26, 1994.

Respondent's Answer to the Amended Statement of Claim filed: November 9, 1994.

## HEARING INFORMATION

Pre-Hearing Conference:	March 10, 1993	-	One Arbitrator
	May 13, 1994	-	One Arbitrator
Hearing Dates/Sessions:	September 22, 1994	-	Two Sessions
	October 6, 1994	-	Two Sessions
	October 7, 1994	-	Two Sessions
	October 19, 1994	-	Two Sessions
	October 26, 1994	-	Two Sessions
	October 27, 1994	-	Two Sessions
	November 2, 1994	-	Two Sessions
	January 17, 1995	-	Two Sessions
	January 18, 1995	-	Two Sessions
	February 8, 1995	-	Two Sessions
	February 9, 1995	-	Two Sessions
	March 16, 1995	-	Two Sessions
	March 29, 1995	-	Two Sessions
	March 30, 1995	-	Two Sessions
	April 4, 1995	-	Two Sessions
	May 2, 1995	-	Two Sessions
	May 3, 1995	-	Two Sessions
	May 11, 1995	-	Two Sessions
	May 25, 1995	-	Two Sessions
	June 6, 1995	-	Two Sessions
	June 14, 1995	-	Two Sessions
	June 21, 1995	-	Two Sessions
	August 4, 1995	-	One Session
	August 14, 1995	-	Two Sessions
	August 15, 1995	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

## CASE SUMMARY

Claimant asserted that Respondent discriminated against her on the basis of sex by: (1) the threatening sexual demands, propositions and other conduct by which her supervisor tried to compel her to have a sexual relationship with him; (2) allowing a sexually hostile environment to exist on the trading floor throughout the time period of her employment, including sexually oriented comments, insults, pranks, cartoons, photographs, devices and food items on the trading floor on a regular basis; (3) failing and refusing to promote Claimant or give her opportunities for advancement; and (4) retaliating against Claimant. Claimant further asserted that when she began to be assertive about the mistreatment, her managers concocted criticisms of her, set her up for termination and fired her.

Claimant alleged that when she refused to sign a release, Respondent maliciously changed the

termination code and issued a Form U-5 which stated falsely that she had been terminated for "poor job performance." Claimant further alleged that she was defamed by that statement and has been unable to obtain and keep suitable employment in the securities industry ever since.

Claimant alleged that after the commencement of this proceeding, Respondent learned that she had obtained new employment. Claimant further alleged that Respondent maliciously served a subpoena on her new employer, without any good faith basis, demanding records relating to her possible participation in any "substance abuse" program. Claimant maintained that her new employer thereupon fired her and she has since been unable to find a job in the securities industry.

Respondent denied Claimant's allegations of wrongful termination, sexual harassment and abuse of process. Respondent maintained that Claimant, a municipal bond liaison hired in 1992, was terminated for poor job performance. Respondent further maintained that Claimant was specifically warned about her performance problems by several of her managers over the course of her employment both verbally and in writing. Respondent further maintained that Claimant's substandard performance manifested itself in frequent lateness; an inability to interact with others in the company; frequent errors; complaints about her abilities from traders and co-liaisons about the information she provided or failed to provide as part of her duties; disorganization; and failure to follow procedures that were required of all the liaisons.

Respondent maintained that Claimant was provided opportunity for advancement, specifically maintained a move to the Par Services area. Respondent further maintained that she failed to go work at the Par Services desk and was subject to termination, but that her previous manager reoffered her the municipal bond liaison position. Respondent also asserted that Claimant never complained to anyone at Shearson about any sexual harassment.

Respondent denied that it caused Claimant emotional distress and maintained that Claimant experienced many other events that have caused her stress throughout her life and during her employment with Respondent. Respondent further maintained that Claimant did not offer any proof to support her wrongful termination, sexual harassment or abuse of process claims and that she was not entitled to damages. Specifically, Respondent maintained that Claimant was not entitled to recover attorney's fees or punitive damages.

### **RELIEF REQUESTED**

On each of her claims, Claimant requested an award of damages for: (a) the income and benefits she lost and would continue to lose as a result of Respondent's wrongful actions; (b) mental and emotional distress; (c) punitive damages; and (d) attorneys' and expert's fees and costs.

In addition, Claimant requested (i) pre-award interest on any back pay awarded to her on her discriminations claims, (ii) damages based on Respondent's discrimination against her with respect to promotions and job advancement in the amount of 40% of her annual compensation (to be added to any back pay and front pay award), (iii) an award reflecting the damage done to her reputation by the false U-5, (iv) an award of sanctions and/or fees as requested in connection with her motion to strike certain testimony and exhibits and (v) an order directing Respondent to correct the false statement it made on the Form U-5.

Respondent requested that Claimant's claims be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent made a motion to strike an exhibit attached to the Statement of Claim. The panel considered this request and ruled that it be denied.

Claimant made a motion to amend the Statement of Claim to add a claim for abuse of process. The panel considered this request and ruled that it be granted.

Respondent made a motion for the panel to issue an order for medical examination of Claimant. The panel considered this request and ruled that it be granted provided that the examination was tape recorded and that a health professional of Claimant's choice was present. Respondent withdrew the motion, but subsequently renewed it and Claimant consented to the examination.

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, the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable and shall pay to Claimant the sum of \$130,000.00, representing compensatory damages for Claimant's claim for a hostile environment.
2. Respondent be and hereby is liable and shall pay to Claimant attorney's fees in the amount of \$32,500.00.
3. Respondent be and hereby is liable and shall pay to Claimant the sum of \$10,000.00 for Claimant's claim for abuse of process.
4. Respondent be and hereby is liable and shall pay to Claimant the sum of \$3,500.00 for legal fees incurred in connection with Respondent's failure to offer complete evidence concerning a charge against Claimant for writing a bad check.
5. Claimant's claim for quid pro quo sexual harassment be and hereby is dismissed in its entirety.
6. Claimant's claim for promotion discrimination be and hereby dismissed in its entirety.
7. Claimant's claim for retaliatory discharge be and hereby is dismissed in its entirety.

8. Claimant's claim for defamation be and hereby is dismissed in its entirety.
9. Claimant's request that the panel order that Respondent amend Claimant's Form U-5 is hereby denied.
10. Claimant's request for interest is hereby denied.
11. Claimant's request for punitive damages is hereby denied.
12. Claimant's request for mental and emotional distress damages is hereby denied.
13. Claimant's motion to strike evidence concerning a bad check is hereby denied.
14. Claimant's motion to strike affirmative defenses asserted in Respondent's Answer to the Amended Statement of Claim is hereby denied.
15. Each party shall bear their own costs.
16. All other claims are hereby denied.

#### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee previously deposited by Claimant and have assessed the following forum fees:

2 pre-hearing conferences x \$300.00	= \$ 600.00
49 hearing sessions x \$1,000.00	= <u>\$49,000.00</u>
Total	<u>\$49,600.00</u>

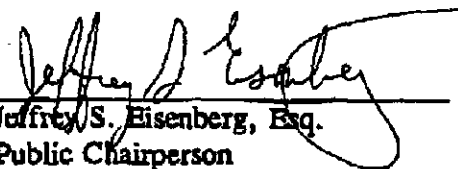
#### **Forum fees assessed against:**

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$24,800.00, representing one-half of the total amount of forum fees assessed.
2. Respondent be and hereby is liable to the NASD for the sum of \$24,800.00, representing one-half of the total amount of forum fees assessed. Respondent previously deposited the sum of \$16,050.00 with the NASD and, therefore, Respondent is liable and shall pay to the NASD the sum of \$8,750.00.

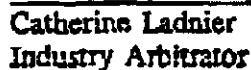
**Fees are payable to the National Association of Securities Dealers, Inc.**

**ARBITRATORS' SIGNATURES**

NASD-NEW YORK  
ARBITRATION DEPT

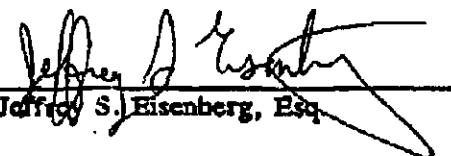
  
Jeffrey S. Eisenberg, Esq.  
Public Chairperson

  
Malcolm P. Malpica, Jr.  
Public Arbitrator

  
Catherine Ladnier  
Industry Arbitrator

Date of decision: January 15, 1996

I, Jeffrey S. Eisenberg, Esq., do hereby affirm that this is my decision in the above-referenced matter.

  
Jeffrey S. Eisenberg, Esq.

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**ARBITRATORS' SIGNATURES**

Jeffrey S. Eisenberg, Esq.  
Public Arbitrator

Malcolm P. Maples, Jr.  
Malcolm P. Maples, Jr.  
Public Arbitrator

Malcolm P. Maples, Jr.  
Malcolm P. Maples, Jr.  
Public Arbitrator

Catherine Ladnier  
Industry Arbitrator

Date of decision: January 15, 1996

I, Malcolm P. Maples, Jr., do hereby affirm that this is my decision in the above-referenced matter.

Malcolm P. Maples, Jr.  
Malcolm P. Maples, Jr.

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Jeffrey S. Eisenberg, Esq.  
Public Chairperson

\_\_\_\_\_  
Malcolm P. Masples, Jr.  
Public Arbitrator

\_\_\_\_\_  
Malcolm P. Masples,  
Public Arbitrator

Catherine Ladnier  
Catherine Ladnier  
Industry Arbitrator

Date of decision: January 15, 1996

I, Catherine Ladnier, do hereby affirm that this is my decision in the above-referenced matter.

Catherine Ladnier  
Catherine Ladnier