

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James M. Fazio

93-01365

Name of Respondents

Shearson Lehman Brothers, Inc.
Lawrence Udell
Joan Caridi
Lisa Kahl

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 5, 1993, Claimant James M. Fazio, who appeared Pro Se, alleged that he was contacted by Respondent Lawrence Udell of Respondent Shearson Lehman Brothers, Inc. on January 15, 1992, and he recommended NMR of America warrants for \$3.00, whose stock was trading at \$8.00. Claimant further alleged that having never traded in warrants, Respondent Lawrence Udell explained warrants; however, during his presentation he neglected to mention that Warrants have an expiration date and that the company can call the warrants. Claimant contended that he purchased 1,000 warrants for \$3,062.50 (\$3/warrant) and less than 30 days later the warrants were called by NMR. Claimant further contended that when he examined the confirmation he received, it appeared in order; however, some information on the confirmation he did not understand: "2/1/1991 extnd fr 9/29/90", which meaning was lost on Claimant since these dates already passed. Claimant asserted that 3 weeks after receiving the confirmation, Respondent Lawrence Udell contacted Claimant to inform him that the warrants had been called by NMR at this time the stock declined to about \$7.00 and the warrants were trading at \$2.00. Claimant further asserted that he was forced to chose between losing 1/3 or more of his investment or investing an additional \$5,000.00, whereby he exercised the warrants and subsequently contacted Respondent Joan Caridi to report his dissatisfaction, whereby Respondent Joan Caridi promised to investigate his charges. Claimant further alleged that Respondent Joan Caridi contacted him in a few days and stated that his complaint had no merit, at which time, after further discussion Respondent Joan Caridi acknowledged that the dates on the confirmation were incorrect and

promised to investigate the matter at greater length. Claimant further contended that on October 28, 1992, Respondent Joan Caridi made a cash offer of \$1,500.00 to settle the grievance whereby Claimant rejected this settlement. Claimant further asserted that he then contacted Ms. Linda Cassano, Division Legal Counsel for Respondent Shearson Lehman Brothers, Inc., and demanded satisfaction, whereby Claimant was contacted by Respondent Lisa Kahl who handled the matter for Ms. Cassano and offered a cash settlement of \$2,000.00 to settle the grievance, which Claimant also rejected. Claimant further alleged that Respondent Shearson Lehman Brothers, Inc. accepts no responsibility for the \$5,000.00 exercise of warrants and because of Respondents' actions, Claimant lost monies in his account.

Respondents Shearson Lehman Brothers, Inc., Lawrence Udell, Joan Caridi and Lisa Kahl by and through their in-house counsel Thomas E. Hommel, Esq., maintained that as the Statement of Claim admits Respondents Joan Caridi and Lisa Kahl had no involvement whatsoever in the transaction for which Claimant seeks damages. Respondents further maintained that Claimant James M. Fazio has admitted his decision to exercise the warrants was made with a full understanding of the facts and Claimant was not deceived with respect to the nature of the warrants. Respondents contended that Respondent Lawrence Udell advised Claimant that the warrants were extended to March 1993, and were callable by the company. Respondents further contended that Claimant, fully aware of his options, and without any complaint whatsoever, elected to exercise the warrants and purchase the stock, evidently because he believed that the stock would increase in value; however, now that the stock has decreased in value, Claimant is seeking to shift the blame for his own judgement upon Respondents.

RELIEF REQUESTED

Claimant James M. Fazio requested \$7,377.20 in actual damages.

Respondents Shearson Lehman Brothers, Inc., Lawrence Udell, Joan Caridi and Lisa Kahl requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Lawrence R. Bowers, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 30, 1993, by the Respondent Shearson Lehman Brothers, Inc. on July 2, 1993, by the Respondent Joan Caridi on July 6, 1993 and by the Respondents Lawrence Udell and Lisa Kahl on July 9, 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 Lawrence Udell are jointly and severally liable and shall pay to the Claimant James M. Fazzio the sum of \$1,250.00 in damages.
2. Respondents Shearson Lehman Brothers, Inc. and Lawrence Udell are jointly and severally liable and shall pay to the Claimant James M. Fazzio simple interest at the rate of 6% per annum to the date of payment of the award.
3. The claims of Claimant James M. Fazzio against Respondents Joan Caridi and Lisa Kahl are dismissed.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant James M. Fazzio shall be retained by the NASD, Inc. Respondents Shearson Lehman Brothers, Inc. and Lawrence Udell are jointly and severally liable and shall pay to the Claimant the sum of \$75.00, as partial reimbursement.

AFFIRMATION

I, LAWRENCE R. BOWERS, 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.



Lawrence R. Bowers, Esq.

DATE OF DECISION: September 27, 1993