

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Barry and Ellen Levine

vs.

Case #  
93-01547

Name of Respondent

Shearson Lehman Brothers, Inc.

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**REPRESENTATION**

For Claimants, Barry and Ellen Levine ("Claimants"), Edward T. Dangel, III, Esq., located in Boston, Massachusetts.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"), Christopher P. Litterio, Esq., form the law firm of Shapiro, Israel & Weiner, P.C., located in Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim was filed on April 15, 1993.

Claimants Submission Agreement was signed on January 13, 1992.

Statement of Answer was filed by Shearson on July 7, 1993.

Shearson's Submission Agreement was signed on May 26, 1993.

**HEARING INFORMATION**

Hearing Dates/Sessions:	September 7, 1994	- 2 sessions
	September 8, 1994	- 2 sessions
	September 12, 1994	- 2 sessions
	October 31, 1994	- 2 sessions

Hearing Location: NASD offices located in Boston, Massachusetts.

**CASE SUMMARY**

Claimants allege that in August and September, 1989, they purchased 7,500 shares

of American West Airlines for a total cost of \$92,347.75 for their joint account. Claimant Barry Levine alleges that he also purchased an additional 17,500 shares at a total cost of \$207,375. Claimants state that at that time this investment represented eighty percent of Barry Levine's retirement account and that it was an unsuitable investment.

Claimants also allege that they relied on the positive reports by the Respondent and strong buy position advocated by the Respondent's airline analyst.

Claimants further allege that Respondent's position was contrary to other airline analysts. Claimants allege that Respondent manipulated the price of American West stock and that Respondent's actions constitute breach of contract, breach of duty, violation of federal securities laws and the rules and regulations of the National Association of Securities Dealers.

Respondent claims that the purchases by the Claimants were unsolicited and that its . The recommendations were merely opinion and cannot be the basis for misrepresentation of claims. Furthermore, the Respondent maintains that the losses suffered by the Claimants were due to market conditions and failure on part of the Claimants to mitigate their losses at an earlier stage.

#### **RELIEF REQUESTED**

Claimants request an award of \$166,000 for the losses sustained in Dr. Levine's retirement account and \$33,750 for the losses in the joint account.

Respondent requests dismissal of the claim.

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

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay Claimants **EIGHTY NINE THOUSAND SIX HUNDRED AND TWENTY THREE DOLLARS AND SIXTY TWO CENTS** (\$89,623.62).
2. Respondent is also liable and shall pay claimants interest in the amount of **TWENTY SIX THOUSAND FOUR HUNDRED AND FORTY ONE DOLLARS AND FIFTY SEVEN CENTS** (\$26,441.57).
3. All other claims for relief, except as provided in the Forum Fees section of this decision, are denied.

#### **FORUM FEES**

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

Non-refundable Filing Fee: \$200.00

Hearing Session Deposit: \$6,000.00 (8 sessions x \$750.00 per session)

Total Fees: \$6,200.00

1. Claimant is assessed a non-refundable filing fee of \$200.00. Claimant previously paid \$950.00 and is entitled to a refund of \$750.00.
2. Respondent is assessed forum fees in the amount of \$6,000.00. Respondent shall satisfy the assessment by reimbursing Claimant \$750.00 and by remitting the balance \$5,250.00 to the NASD.

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


#### **ARBITRATION PANEL**

Charles F. O'Connell, Esq.	-	Public Chairperson
Dallas W. Coffman	-	Industry Panelist
John R. Thompson	-	Public Panelist

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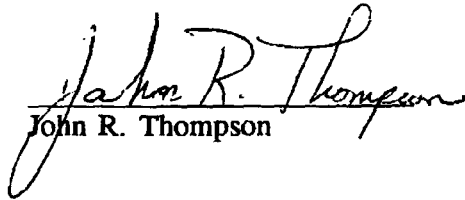
Concurring Arbitrator's Signature

  
Charles F. O'Connell, Esq.

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Concurring Arbitrator's Signature

  
John R. Thompson

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Concurring Arbitrator's Signature

  
Dallas W. Coffman

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