

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Carla Fracci

93-01930

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Gerard Celmer

REPRESENTATION

For Claimant: William M. Roth, Esq. of New York, NY.

For Respondent Shearson Lehman Brothers: Esther Koslow, Esq., in-house counsel at Smith Barney Shearson, Inc.

For Respondent Gerard Celmer: Eric W. Berry, Esq. of the law firm of Berry and Menamin of New York, NY.

CASE INFORMATION

Statement of Claim filed May 13, 1993.

Claimant's Submission Agreement signed on May 10, 1993.

Statement of Answer and Counterclaim filed by Respondent Shearson Lehman Brothers on August 27, 1993.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on August 27, 1993.

Statement of Answer filed by Respondent Gerard Celmer on August 27, 1993.

Respondent Gerard Celmer's Submission Agreement signed on August 30, 1993.

HEARING INFORMATION

Pre-hearing Conference: May 12, 1994
 June 2, 1994
 June 13, 1994

Hearing Dates:	June 22, 1994	2 sessions
	June 23, 1994	2 sessions
	August 1, 1994	2 sessions
	August 8, 1994	2 sessions

Hearing Location: NASD offices located in New York, NY.

CASE SUMMARY

Claimant alleged that Respondents engaged in the following activities in her account: unauthorized trading in her account; unauthorized margin and option trading in her account; churning; failure to disclose the true nature of Respondent Celmer's activity with respect to Claimant's account; Respondents engaged in deceptive practices in regard to the sale and purchase of securities; purchase of securities unsuitable for the financial status and investment objectives of Claimant; failure to follow Claimant's and her agent's directions as to investment strategy and closing of the account; and common law fraud. Claimant further alleged Respondents engaged in leveraged transactions of speculative or thinly traded stocks and Respondent Celmer's behavior was willful and malicious; therefore, Claimant is entitled to punitive damages. Claimant further alleged Respondent Shearson Lehman Brothers, Inc. failed to properly supervise Respondent Celmer and monitor and investigate his activities and Shearson's activity was willful, reckless and grossly negligent and, therefore, Claimant is entitled to punitive damages.

Respondent Gerard Celmer maintained the Claimant's designated agent authorized each and every transaction in Claimant's account and agreed to and repeatedly authorized the strategies Respondent Celmer implemented in the trading of Claimant's account. Respondent Gerard Celmer further maintained immediately after the purchases were made Claimant received written transactional confirmations and monthly statements and neither Claimant or her agent objected to any investments and the claims are barred by the equitable principles of waiver, estoppel and ratification. Respondent Gerard Celmer further maintained he did not make any misrepresentations, omissions or misstatements with respect to the investments made in Claimant's account and Respondent Gerard Celmer met with Claimant's agent to discuss Claimant's account and Respondent was informed that Claimant was interested in options trading and that Claimant and

her agent had decided on a speculative objective in the account to recover losses and Claimant's agent stated he understood the strategy of margin trading. Respondent Gerard Celmer further maintained any losses or diminution in the value of Claimant's account were within the risk Claimant assumed and was as a result, in whole or in part, of unforeseen market fluctuations and Claimant is precluded from recovering punitive damages.

Respondent Shearson Lehman Brothers, Inc. maintained the trading in Claimant's account was indisputably suitable and Claimant's agent advised Respondent Gerard Celmer that Claimant wished to aggressively seek a return in the account and Claimant's agent directed and authorized each and every transaction in Claimant's account and if anyone is responsible to Claimant, it is her agent. Respondent Shearson Lehman Brothers, Inc. further maintained that at no time did either Claimant or her agent complain about the activity in the account and the arbitration was commenced only as a result of Shearson Lehman Brothers, Inc.'s numerous attempts to collect an unsecured debit balance in Claimant's account and an attempt to avoid her legal obligation to Respondent Shearson Lehman Brothers, Inc. Respondent Shearson Lehman Brothers, Inc. further maintained Claimant's agent advised Respondent Gerard Celmer the account should be traded aggressively in order to achieve short-term profits and he acknowledged to Respondent Gerard Celmer this was a riskier strategy and he was familiar with the strategy of margin and Respondent Gerard Celmer discussed potential options strategies, in particular calls and gave Claimant's agent materials on options and he agreed to the suggested strategies. Respondent Shearson Lehman Brothers, Inc. further maintained it did not make any misrepresentations, omissions or misstatements with respect to the investments made in Claimant's account and to the extent any losses or diminution in the value of Claimant's account has occurred, such losses were within the risk Claimant assumed and were as a result, in whole or in part, of unforeseen market fluctuations and Claimant is precluded from recovering punitive damages.

Respondent Shearson Lehman Brothers, Inc. asserted a counterclaim which alleged that Claimant maintained a margin account with Shearson Lehman Brothers, Inc. which was liquidated in order to meet margin calls and Claimant presently has an unsecured debit balance in the sum of \$8,020.00

In response, the Claimant maintained the Respondent Shearson Lehman Brothers, Inc. is not entitled to an award on his counterclaim.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$198,000.00 plus interest from January 1, 1991; punitive damages in the sum of \$300,000.00; attorneys' fees; costs of the arbitration; any court costs that may be incurred and disbursements; and any additional and further relief which the panel may deem just and proper. Claimant further requested a dismissal of the counterclaim.

Respondent Gerard Celmer requested a dismissal of the claim.

Respondent Shearson Lehman Brothers, Inc. requested that the Statement of Claim be dismissed and requested payment in full for the balance due under the counterclaim in the sum of \$8,020.00 together with reasonable costs including attorneys' fees, together with such other and further relief as the arbitrators deem just and proper.

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 Respondent Gerard Celmer be and hereby is liable and shall pay to the Claimant the sum of \$15,000.00 plus simple interest at the rate of 8% per annum from the date of decision until the date of payment of the award.
2. All claims against Respondent Shearson Lehman Brothers, Inc. be and hereby are dismissed in all respects.
3. The counterclaim of Respondent Shearson Lehman Brothers, Inc. is denied.
4. Claimant's request for punitive damages is denied.
5. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

8 sessions x \$750.00 (\$6,000.00) + 3 pre-hearing conferences (\$900.00)
= \$6,900.00 less Claimant's hearing session deposit (\$750.00) less
Respondent's hearing session deposit (\$300.00) = net \$5,850.00 due.

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,550.00 representing her portion of the outstanding forum fees.

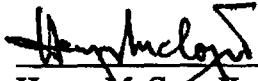
The Respondent Shearson Lehman Brothers, Inc. be and hereby is liable and shall pay to the NASD the sum of \$2,000.00 representing their portion of the outstanding forum fees.

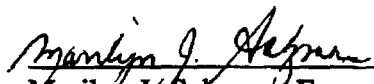
The Respondent Gerard Celmer be and hereby is liable and shall pay to the NASD the sum of \$2,300.00 representing his portion of the outstanding forum fees.

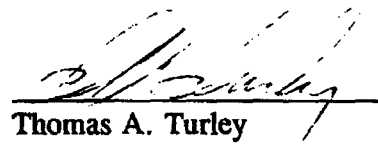
Fees are payable to the National Association of Securities Dealers, Inc.

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ARBITRATORS' SIGNATURE


Henry McCoy, II, Esq.
Public Arbitrator


Marilyn J. Salzman, Esq.
Public Arbitrator


Thomas A. Turley
Industry Arbitrator

Date of Decision: November 4, 1994

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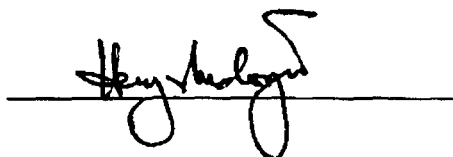
Case No.: 93-01930

STATE OF: NEW YORK

COUNTY OF: NEW YORK

SS:

On this 21st day of October, 1994, before me personally appeared Henry McCoy, II, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



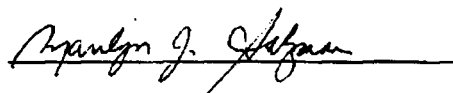
MAHESH M DAVE
MAHESH M. DAVE
40 Balmoral Crescent
White Plains, N.Y. 10607
Registration No. 4953345
Commission Expires on 7/12/95

STATE OF: New York

COUNTY OF: Nassau

SS:

On this 24th day of October, 1994, before me personally appeared Marilyn J. Salzman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



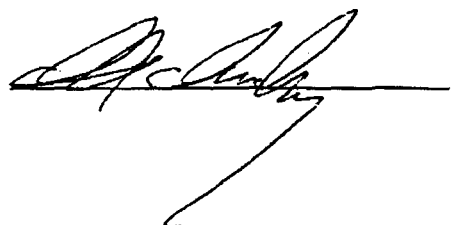
Stanley P. Salzman
STANLEY P. SALZMAN
NOTARY PUBLIC, State of New York
No. 8746425
Qualified in Nassau County
Commission Expires August 31, 1996

STATE OF:

COUNTY OF:

SS:

On this day of , 1994, before me personally appeared Thomas A. Turley known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.



Carol McGowan Nov. 1, 1994
CAROL MCGOWAN
Notary Public, State of New York
No. 4803476 Qual. in West. Co.
Commission Expires Nov. 30, 1994