

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Howell L. and Patricia Jean Heald

93-02300

Name of Respondent

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

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 10, 1993, Claimants Howell and Patricia Jean Heald, who appeared Pro Se, alleged that Respondent Shearson Lehman Brothers, Inc. sold from their account 185 shares of Keystone tax exempt stock in order to cover a 4% sales charge on the value of the stock that they originally wanted to buy, (but later canceled the order). The Claimants further alleged that the Respondent led them to believe that the order was canceled, because they were sent a confirmation slip explaining the cancellation, but instead it retained the newly purchased shares and failed to notify them that they owed \$50,000.00 until it was too late to cover the debit, causing the shares to be liquidated. The Claimants contended that since the day they contacted the Respondent to request the cancellation, there was no effort made by anyone in the office to either collect the \$50,000.00 or inform them about the transactions, and that therefore, the Respondent should be held liable for the losses they incurred.

Respondent Shearson Lehman Brothers, Inc., through its in-house counsel, John P. Bevilacqua, Esq., maintained that although a confirmation slip about a cancellation was inadvertently sent to the Claimants, the trade could not be prevented and several attempts were made, by telephone and mailgram, to collect the payment, but since they were unable to obtain this payment, an unsecured debit balance was left in the account. The Respondent contended that the efforts to cancel Claimants' purchase were made out of courtesy and at no expense to the Claimants, and that unsuccessful in the attempt, they were obligated to pay for their purchase. The Respondent further contended that it was justified in liquidating the Claimants' position by selling 4,557 shares and was also required by law to make up the cost of the transaction.

**RELIEF REQUESTED**

Claimants Howell and Patricia Jean Heald requested the return of 185 shares of Keystone Tax-Exempt stock or an amount equal to the value of those shares.

Respondent Shearson Lehman Brothers, Inc. requested that 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, Louise T. Jeroslow, 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 June 2, 1993 and by the Respondent on July 28, 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. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to Claimants Howell and Patricia Jean Heald \$2,000.00 in actual damages, plus interest at the rate of 12 % per annum from April 1, 1992 to the date of payment of the award.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay \$50.00 to the Claimants as reimbursement of the fee.

**AFFIRMATION**

I, LOUISE T. JEROSLOW, 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.



Signature of Arbitrator

DATE OF DECISION: December 8, 1993