

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mary E. Cummings Trust, David Rifkin TTE

Case # 93-02379

Name of Respondent

Shearson Lehman Brothers, Inc.

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REPRESENTATION

For Claimant, Mary E. Cummings Trust, David Rifkin TTE ("Claimant"), David W. Rifkin, Esq. of the Rifkin Law Offices located in Salem, Massachusetts.

For Respondent, Shearson Lehman Brothers ("Respondent"), Paul Giappone, Esq. of Smith Barney Shearson located in New York.

CASE INFORMATION

Statement of Claim was filed by Claimant on June 14, 1993.  
Claimant's Submission Agreement was signed on August 18, 1993.

Statement of Answer was filed by Respondent on September 23, 1993.  
Respondent's Submission Agreement was signed on September 23, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: May 4, 1994 and June 8, 1994 - 4 Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that her account executive Pamela Nottingham, who was

employed by Respondent, negligently failed to transfer assets from Mary and Luella Cummings' joint account to a trust account, thus requiring the expenditure of such assets prior to Cummings Medicaid eligibility. Claimant further alleged that although Nottingham told Luella Cummings that she could not transfer the funds until legal counsel had verified that the trust documents were properly prepared, Nottingham nevertheless represented to Luella Cummings that Nottingham had transferred the jointly held funds into the trust as of September, 1989.

Respondent alleged that Respondent acted properly in attempting to transfer the assets to a trust account for the Cummings, and that Nottingham was unable to transfer these funds due to Cummings' failure to produce and execute the requisite documents. Respondent further maintained that Cummings failed to produce these documents despite the fact that Nottingham explained their necessity and provided all of the appropriate paperwork. Respondent also interposed eight affirmative defenses.

#### **RELIEF REQUESTED**

Claimant requested that Claimant be granted an arbitration award against Respondent for the following:

\$268, 631: A claim for treble punitive damages of the sum of \$89,543.67 - the result of the delay in transferring the funds to the trust, figured as of July 13, 1992.

Respondent requested that the Statement of Claim be dismissed in its entirety. Respondent also requested attorney's fees.

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

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.

At the conclusion of the Claimant's case, Respondent moved to dismiss the case. This panel denied the motion.

**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 Respondents are not liable to Claimant, and the case is dismissed.
- 2) Respondent's request for attorney's fees is 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

4 hearing sessions at \$750 per session = \$3,000.00

Total Fees = \$3,200.00

Claimant is assessed \$200.00 non-refundable filing fee.

Claimant deposited \$950.00 and is entitled a \$750.00 refund.

Respondent is assessed \$3,000.00 in forum fees and shall satisfy this assessment by reimbursing Claimant \$750 and by remitting the balance \$2,250.00 to the NASD.

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

**ARBITRATION PANEL**

S. Lawrence Gwin Jr., Esq.	-	Public Chairperson
Jeanne O' Connell	-	Public Panelist
Jeffrey R. Larsen, Esq.	-	Industry Panelist

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Concurring Arbitrators' Signature

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S. Lawrence Gwin, Jr., Esq.

Date of Decision: \_\_\_\_\_