

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Frank Marchese

93-02739

Name of Respondent

Shearson Lehman Brothers, Inc.
and Ronald Smith

REPRESENTATION

For Claimant, Frank Magaletta, Esq. of the law firm of Lampf, Lipkind, Prupis, Petigrow & Labue, West Orange, NJ

For Respondents, James Goddard, Esq., of Smith Barney Shearson, Inc. (formerly Shearson Lehman Bros., Inc.)

CASE INFORMATION

Statement of Claim filed: July 12, 1993

Amended Statement of Claim filed: May 25, 1994

Second Amended Statement of Claim filed: July 12, 1995

Claimant's Submission Agreement signed on: June 7, 1993

Respondents' Joint Statement of Answer filed: September 2, 1993

Respondent, Shearson Lehman Bros, Inc.'s, Submission Agreement signed on: September 2, 1993

Respondent, Ronald Smith's, Submission Agreement signed on: September 22, 1993

HEARING INFORMATION

Pre-Hearing Conferences:	June	2, 1994	1 Session
Hearing dates/sessions:	October	19, 1994	2 Sessions
	November	21, 1994	2 Sessions
	November	22, 1994	2 Sessions
	January	4, 1995	2 Sessions
	January	5, 1995	2 Sessions
	April	10, 1995	2 Sessions
	April	11, 1995	1 Session
	May	8, 1995	2 Sessions
	May	9, 1995	1 Session
	June	8, 1995	2 Sessions
	June	9, 1995	1 Session
	July	13, 1995	1 Session
	July	14, 1995	2 Sessions
	September	15, 1995	2 Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that Respondent, Ronald Smith ("Mr. Smith"), Claimant's broker at Respondent Shearson Lehman Brothers, Inc. ("Shearson"), made misrepresentations to Claimant to induce him to purchase stock and options in Aura Systems, Inc. ("Aura"), in which Claimant incurred significant losses. Specifically Claimant alleged that Mr. Smith stated that he and his family had personal contact with Aura company officials; that the stock price of Aura would reach \$500 per share; that Shearson was highly recommending the stock; that he had purchased millions of dollars of the stock for Shearson; and, that Aura was an investment in which the Claimant could not lose money.

Claimant further alleged that Mr. Smith had excessively traded Claimant's account and that the purchase of Aura stock and options were unsuitable investments given Claimant's conservative investment objectives.

Additionally, Claimant alleged that Shearson had inadequately supervised Mr. Smith in the handling of the Claimant's account.

Respondent Mr. Smith denied having made the misrepresentation attributed to him by the Claimant. Respondents also denied that Mr. Smith's recommendation of Aura was an unsuitable investment for the Claimant and maintained that Claimant had a substantial net worth that qualified him for an investment in Aura. Respondents further alleged that Claimant had completed a new account application which listed his investment objectives as "appreciation with risk" and "speculation".

Respondents maintained that Claimant was a sophisticated investor who was aware of the risks associated with options trading and researched Aura before he had voluntarily authorized each trade of stock or options in Aura.

RELIEF REQUESTED

Claimant requested damages against the Respondents, jointly and severally, in the amount of \$500,000.00 including punitive damages.

Respondents requested that all Claims be dismissed and that all costs and expenses be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed to submit written briefs in substitution of oral closing arguments. Written memoranda were submitted by the parties on September 29, 1995. Reply briefs were submitted by both parties on October 9, 1995.

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.

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) All claims be and hereby are denied;
- 2) Claimant's request for punitive damages is denied;
- 3) All parties shall bear their respective costs, including attorney's fees;
- 4) All forum fees are to be split equally between the parties; and,

- 5) All other requests for relief be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Pre-Hearing Conference:	\$ 600.00	(1 Sessions)
Hearing Sessions:	\$18,000.00	(24 Sessions)
Total Forum Fees:	\$18,600.00	

Claimant is assessed the sum of \$9,300.00 which represents one-half of the total forum fees due, less the \$750.00 hearing session deposit paid, leaving \$8,550.00 due. Claimant be and hereby is liable and shall pay to the NASD the sum of \$8,550.00.

Respondents, Ronald Smith and Shearson Lehman Brothers, Inc are assessed, jointly and severally, the sum of \$9,300.00 which represents one-half of the total forum fees due. Respondents be and hereby are liable and shall pay to the NASD the sum of \$9,300.00.

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

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Arbitrator Signature Page

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, appearing to read "David Fogel", written over a horizontal line.

David Fogel, Esq.
Public Chairperson


Roger Brandwien, Esq.
Public Arbitrator

Joseph DaGrosa
Industry Arbitrator

Date of decision: December 7, 1995

NASD Award Case No. 93-02739
Arbitrator Signature Page

I, **David Fogel, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.



David Fogel, Esq.

I, **Roger Brandwein, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Roger Brandwein, Esq.


I, **Joseph DaGrosa**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

Joseph DaGrosa

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Public Chairperson



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Public Arbitrator

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Industry Arbitrator

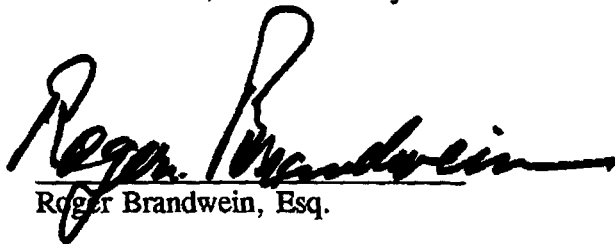
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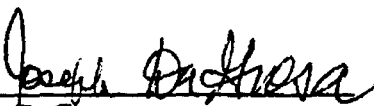
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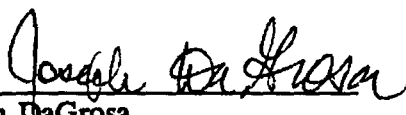
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