

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the Matter of the Arbitration Between

ANNE M. GARCIA

Claimants

v.

NASD No. 93-3240

JEFFREY DAFT, SHEARSON LEHMAN  
BROTHERS, and SUTRO & CO., INC.

Respondents

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***Representation***

For Claimant: Daniel Garcia, Esq., Sacramento, CA

For Respondent Shearson Lehman Brothers (Shearson): Ellen Slipp, Esq. of Shearson  
New York, N.Y.

For Respondents Sutro & Co. and Jeffrey Daft: Brian Zagon, Esq. and Gordon Young, Esq.  
of Keesal, Young & Logan, San Francisco, CA

***Case Information***

Statement of Claim filed: August 18, 1994

Claimant's Submission Agreement signed: June 29, 1993

Statement of Answer for Shearson and Jeffrey Daft filed on: January 6, 1994

Statement of Answer for Sutro & Co. and Jeffrey Daft filed on: March 1, 1994:

Respondent Shearson's Submission Agreement signed on: October 18, 1994

Respondent Sutro & Co. and Jeffrey Daft did not file Submission Agreements but appeared at  
the arbitration and submitted to the jurisdiction of the National Association of  
Securities Dealers.

### ***Hearing Information***

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: May 10, 1994/two

Hearing Location: San Francisco, CA

### ***Case Summary***

**Claimant alleged:**

Lack of suitability, negligence and breach of fiduciary duty in the purchase of and sale of various securities, including Del Taco Income Properties IV, VMS Short Term Income Trust, VMS Strategic Land Fund II and Pacific Gas and Electric. At the time the investments were made Claimant was involved in a traumatic career change and had no investment experience. Claimant informed Jeffrey Daft (Daft) that she wanted her money invested in stable securities as a retirement supplement.

**Respondents Shearson and Daft generally denied all allegations in the Statement of Claim and alleged:**

None of Claimant's investments were purchased at Shearson and it therefore has no obligation or liability with respect to investments purchased at another brokerage firm prior to Garcia's transfer of her accounts to Shearson. Daft first met Claimant while employed at Sutro & Co. (Sutro) which is where she purchased the investments at issue. She never complained about her investments and moved her accounts to Shearson when Daft became employed there.

**Respondents Sutro and Daft generally denied all allegations in the Statement of Claim and alleged:**

At the time Claimant opened her account she was 28 years old with no dependents and represented she had had prior investing experience with a brokerage firm. Claimant expressed an interest in long term income investments. She authorized each of the investments made on her behalf. At no time while her accounts were at Sutro did Claimant complain about any of her investments.

### ***Relief Requested***

**Claimant requested:**

1. Compensatory damages of \$27,000;
2. Costs.

### ***Other Issues Considered and 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.

Shearson's Motions for Dismissal and Directed Verdict, made at the hearing, were denied. Sutro and Daft's Motion to Dismiss based on the Statute of Limitations, made at the hearing, was denied. Sutro and Daft's Motion to Dismiss based on rescission of the Del Taco investment, made at the hearing, was granted as to rescission of the Del Taco investment.

### ***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. With respect to all claims against Respondents Shearson Lehman Brothers, and Jeffrey Daft for the time he worked at Shearson Lehman Brothers, the arbitrator finds for Respondents Shearson Lehman Brothers and Jeffrey Daft;
2. Respondents Sutro & Co. and Jeffrey Daft are jointly and severally liable for and shall pay Claimant \$2,100.
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

### ***Other Costs***

None.

### ***Forum Fees***

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$300 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Claimant for \$300, already paid as a hearing deposit, leaving no balance due, and Respondents Sutro and Daft, jointly and severally, for \$300,

calculated as follows: two hearing sessions at \$300/hearing session, equals \$600, divided equally between Claimant and Sutro and Daft jointly and severally, minus \$300 already paid by the claimant as a hearing deposit.

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

***Arbitration Panel***

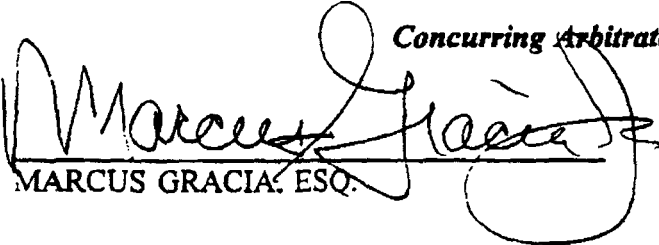
***Name***

***Public/Industry***

Marcus Gracia

Public

***Concurring Arbitrator's Signature***

  
MARCUS GRACIA, ESQ.

***Date of Decision:***

Date Served: 06/09/94