

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Gerald M. Isbell

and

93-03459

**Name of Respondents**

Shearson Lehman Brothers, Inc.  
David B. Smith  
Ron Gard

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**REPRESENTATION OF PARTIES**

Gerald M. Isbell ("Claimant") was represented by John P. Cione, Esq., Solana Beach, California.

Shearson Lehman Brothers, Inc., David B. Smith and Ron Gard ("Respondents") were represented by Paul Giappone, Esq., Smith Barney Shearson, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 3, 1993. Submission Agreement of Claimant Gerald M. Isbell was signed on August 10, 1993.

Statement of Answer was filed by Respondents on November 24, 1993. Submission Agreement of Respondent Smith Barney Shearson, Inc. was signed on December 2, 1993 by Paul Giappone. Submission Agreement of Respondent Ronald Gard was signed on November 22, 1993. Submission Agreement of Respondent David B. Smith was signed on November 22, 1993.

### **HEARING INFORMATION**

Pre-hearing conferences were held on March 7, 1994 for one (1) session and April 6, 1994 for one (1) session.

The hearing was held on Tuesday, December 6, 1994 for two (2) sessions and Wednesday, December 7, for two (2) sessions in Dallas, Texas for a total of two (2) pre-hearing and four (4) hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents were negligent in their handling of his account, made misrepresentations regarding the stocks purchased, engaged in churning, that Respondent Shearson did not properly supervise Respondents Smith and Gard, and that Respondents violated their fiduciary duty to him. Specifically, Claimant stated that:

- he had contacted the Respondents seeking a professional with expertise in the biotechnology industry and was referred to Respondent Smith;
- he had advised Respondent Smith that his investment objective was to invest his savings for growth towards his retirement;
- Respondent Smith made misrepresentations regarding Amgen, United Health Care, Adobe and Premier Anesthesia;
- Respondent Smith never explained the risks of opening a margin account, or how a margin account operated;
- Respondent Smith never advised him of the risks associated with option trading; and
- Respondents Gard and Shearson failed to properly supervise Respondent Smith.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant had revealed that he was 35 years of age; a doctor who specialized in gastroenterology; that he had an estimated net worth of \$1,000,000; an estimated liquid net worth of \$300,000; that the money he sought to invest was venture capital and not for his retirement. It was further stated by the Respondents that Respondent Smith discussed each and every trade in advance of the investment and that all transactions in the account were made with the Claimant's permission and pursuant to his authority. Numerous affirmative defenses were asserted by the Respondents including but not limited to the following:

- failure to state a claim upon which relief can be granted;
- assumption of the risk;
- failure to mitigate; and
- the claims are barred by the applicable statutes of limitation.

### **RELIEF REQUESTED**

Claimant requested an award to him of losses in the amount of \$100,000; interest on the \$100,000 from January 1992 to the present; costs of this proceeding; representation fees of \$15,000; and punitive damages in the amount of \$100,000.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

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

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. The claims asserted in this matter against Respondents shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$300 = \$600 and four (4) sessions x \$750 = \$3,000 for a total of \$3,600 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant leaving a balance due of \$2,850. Claimant shall be and hereby is liable for and shall pay to the NASD the sum of \$2,850 as the balance due for forum fees.

The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ James S. Raber, Esq.

James S. Raber, Esq.

Public Arbitrator, Presiding Chair

December 20, 1994

/s/ James L. Goble

James L. Goble

Public Arbitrator

December 16, 1994

/s/ David L. Baker

David L. Baker

Industry Arbitrator

December 19, 1994