

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Bert E. and Florence V. Benson

93-04019

Names of Respondents

Shearson Lehman Brothers, Inc. and  
Charles J. Sjostrom, Jr.

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**REPRESENTATION**

Claimants, Bert E. and Florence V. Benson ("Bensons") were represented by Bruce Pearson of Fargo, North Dakota.

Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Charles J. Sjostrom, Jr. ("Sjostrom") were represented by Anne Parry, Esq. of Smith Barney, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on or after December 1, 1993.

Claimants', Bert and Florence V. Benson's Submission Agreement was signed on December 1, 1993.

A Joint Statement of Answer was filed with the NASD by Respondents, Shearson Lehman Brothers, Inc. and Charles J. Sjostrom, Jr. on January 28, 1994.

Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement was signed on March 23, 1994 by Ralph P. Schiavo, Esq., Vice President, Smith Barney Shearson, Inc.

Respondent, Charles J. Sjostrom, Jr.'s Submission Agreement was signed on January 3, 1994.

### HEARING INFORMATION

Pre-hearing conferences were held on August 30, 1994 for One (1) hearing session and on February 7, 1995 for One (1) hearing session.

The hearing date was May 23, 1995 and the hearing lasted One (1) hearing session.

The hearing location was Minneapolis, Minnesota.

### CASE SUMMARY

Claimants, the Bensons, alleged that Respondent Sjostrom, an agent of Respondent Shearson, acted in violation of Section 10b-10b5 of the Securities Act by engaging in fraud, negligence, omission of material facts, and misrepresentation in the sale of securities. Specifically, the Bensons state that in October of 1987 they purchased 1,000 shares of limited partnership Jetstream L.P. for \$20,000.00 from the Respondents Shearson and Sjostrom. Sjostrom promised the securities would be traded in a listed exchange and that the price movements could be followed by the Bensons on a daily basis. However, the securities were not on a listed exchange. The securities could not be sold and resulted in their damage claimed.

Respondents, Shearson and Sjostrom, denied the material allegations in the Statement of Claim and asserted the following affirmative defenses:

1. Claimants have failed to state a claim upon which relief can be granted;
2. Claimants are barred from recovery by the applicable statute of limitations;
3. Claimants were fully aware of the risks associated with their investment and voluntarily assumed those risks;
4. Claimants are barred from recovery under the doctrine of ratification, account stated, estoppel, waiver, and laches;
5. Claimants have failed to mitigate their damages;
6. Claimants' loss resulted from their own negligence;
7. Claimants failed to duly notify Respondents to change their investment strategies;
8. Respondents are not responsible for any of the Claimants' losses;

9. Claimants have failed to state a cause of action for fraud; and

10. Claimants are barred from recovery by the NASD Code of Arbitration Procedure Section 15.

**RELIEF REQUESTED**

The Bensons requested the return of \$20,000.00 of principal, \$8,400.00 as interest, \$2,000.00 as attorney's fees and \$500.00 as filing fees.

Shearson and Sjostrom, requested that the Statement of Claim be dismissed with costs assessed against Claimants.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Shearson Lehman Brothers, Inc. and Charles J. Sjostrom, Jr. shall be jointly and severally liable for and shall pay to the Claimants Bert and Florence Benson a sum of \$3,550.00;

2. Claimants' request for interest is denied;

3. Claimants' request for attorney's fees is denied; and

4. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

**FORUM FEES-**

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. One (1) hearing session x \$400.00 per session = \$400.00 and Two (2) pre-hearing conferences x \$300.00 = \$600.00 for a total of \$1000.00 in Forum Fees.

The National Association of Securities Dealers, Inc. shall retain the \$100.00 non-refundable claim filing fee and the \$400.00 hearing session deposit previously paid by Claimants, Bert and Florence Benson. Respondents Shearson Lehman Brothers, Inc. is assessed additional Forum Fees in the amount of \$600.00 and Shearson Lehman Brothers, Inc. and Charles J. Sjostrom, Jr. are jointly and severally liable to reimburse the Claimants, Bert and Florence Benson, the sum of \$500.00 which was previously deposited with the NASD as the filing fee and the hearing session deposit.

The NASD shall also retain the postponement fee paid to the NASD in the amount of \$400.00.

Arbitrator's Signature

/s/ Robert R. Biglow  
Robert R. Biglow, Esq.  
Presiding Public Arbitrator

July 17, 1995  
Dated

For NASD use only  
Date Award Served on the parties: July 17, 1995