

**N.A.S.D. AWARD**

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

In the matter of the Arbitration Between

**Name of Claimant(s)**

Joyce Wells Individually and  
Joyce Wells Trustee FBO Revocable  
Trust U/A/D 3/18/91

NASD Arbitration  
No. 93-04179

**Name of Respondent(s)**

Sutro & Co. Incorporated  
Shearson Lehman Brothers, Inc.  
John William McCall, Jr.

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**REPRESENTATION**

For Claimant: Anthony M. Englese, Esq., San Francisco, California

For Respondents: William E. McDonnell, Esq. and Kelly J. Moynihan,  
Esq., Keesal, Young & Logan, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: October 7, 1993

Claimant's Opposition Memorandum to Respondents Sutro & Co.  
Incorporated and John William McCall, Jr.'s Motion to Dismiss  
pursuant to the Statute of Limitations filed: February 1, 1994  
Claimant's Submission Agreement signed: October 5, 1993

Joint Statement of Answer filed by Respondents Sutro & Co.  
Incorporated and John William McCall, Jr.: January 11, 1994  
Respondents Sutro & Co. Incorporated and John William McCall, Jr.'s  
Motion to Dismiss pursuant to the Statute of Limitations filed:  
January 5, 1994

Respondents Sutro & Co. Incorporated and John William McCall, Jr.'s

Reply Brief in support of its Motion to Dismiss filed: March 16, 1994

Motion to Dismiss pursuant to the Statute of Limitations filed by Respondents Sutro & Co. Incorporated and John William McCall, Jr.: October 6, 1994

Joint Statement of Answer filed by Respondents Smith Barney Shearson Inc. (also known as Shearson Lehman Brothers, Inc.) and John William McCall, Jr.: January 13, 1994

Respondents' Submission Agreements signed as follows:

Sutro & Co. Incorporated (Sutro): January 10, 1994

Smith Barney Shearson Inc. (Shearson): January 13, 1994

John William McCall, Jr. (McCall): January 10, 1994

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

October 17, 1994 (one session)

Hearing Date(s)/Session(s): November 1, 1994 (two sessions)

November 2, 1994 (two sessions)

November 3, 1994 (two sessions)

November 4, 1994 (three sessions)

Hearing Location:

San Francisco, California

#### CASE SUMMARY

Claimant alleged that she is an investor who had no direct experience in the stock market prior to the events alleged in her Statement of Claim and alleged that her investment objectives were preservation of capital and current income. Claimant asserted the following claims with respect to her securities accounts: 1) First Claim for Relief (McCall and Shearson only) (Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5); 2) Second Claim for Relief (Against all Respondents) (Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5); 3) Third Claim for Relief (Against all Respondents) (Violation of California Corporations Code); 4) Fourth Claim for Relief (Against all Respondents) (Intentional Misrepresentation); 5) Fifth Claim for Relief (Against all Respondents) (Negligent Misrepresentation); and 6) Sixth Claim for Relief (Against all

Respondents) (Breach of Fiduciary duty).

Respondents Sutro and McCall denied generally and specifically each and every substantive allegation contained in the Statement of Claim and denied that Claimant was damaged in any sum or sums whatsoever. Sutro and McCall alleged that at all times Claimant's account was handled properly by Respondents and in accordance with applicable rules, regulations and law. Sutro and McCall also asserted affirmative defenses.

Respondents Shearson and McCall generally denied all allegations contained in Claimant's Statement of Claim as to any activity related to McCall's employment at Shearson and alleged that Claimant is and was at all times relevant to this proceeding an intelligent individual, fully capable of monitoring and handling her financial assets. Shearson and McCall further alleged that Claimant utilized, whenever she felt necessary, advice from others with business experience, including her accountant, her attorneys and others in business. Shearson and McCall further alleged: 1) that Claimant was fully aware of the transactions in her account and was fully informed about the nature of the borrowing she made in her margin account; 2) when Claimant transferred her account to Shearson, she had a preexisting margin debit of approximately \$250,000.00; 3) that in January, 1993 Claimant transferred her account to Dean Witter; and 4) despite this earlier margin balance and withdrawals totalling in excess of \$250,000.00, Claimant's trading while at Shearson resulted in overall profits to her account and that she, not her stockbroker, knowingly depleted her account's equity. Shearson and McCall also asserted legal defenses.

#### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the sum of at least \$750,000.00 with interest against Sutro and McCall and \$750,000.00 from Shearson and McCall with interest thereon, plus additional damages, including lost profits, according to proof; and rescission of the limited partnerships specified in the Statement of Claim;
2. Punitive damages in a sum to be determined by the arbitrators against each Respondent;
3. Costs of suit, including reasonable attorneys' fees;

and

4. Such other and further relief as the arbitration panel deems just and proper.

Respondents requested dismissal of Claimant's claims, costs, and such other and further relief as the arbitrators deem just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

The panel is cognizant of and governed by the Director's Section 15 ruling of March 25, 1994 and their pre-hearing rulings of October 19, 1994 and October 31, 1994.

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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 by Claimant against Sutro & Co. Incorporated are dismissed.

2. Respondents Shearson Lehman Brothers, Inc. and John William McCall, Jr. are jointly and severally liable for and shall pay to Claimant the sum of \$57,000.00, in satisfaction of Claimant's claims.

3. Claimant's claim for punitive damages is dismissed.

4. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$1,000.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against Claimant and Respondents Shearson Lehman Brothers, Inc. and John William McCall, Jr. (Respondents) and are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Nine hearing sessions @ \$1,000.00/session	=	<u>\$9,000.00</u>
Total fees assessed	=	\$9,300.00

Claimant's share (50%)	=	\$4,650.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$3,650.00

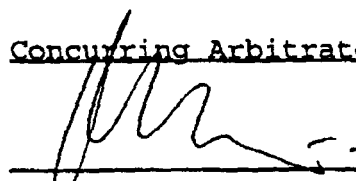
Respondents' share, jointly and severally (50%)	=	\$4,650.00
Balance due	=	\$4,650.00

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

#### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Robert L. Liu, Esq.	Public Arbitrator
Paula Ho-Wolper	Public Arbitrator
George Stanley Guth	Industry Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Robert L. Liu, Esq.

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Paula Ho-Wolper

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George Stanley Guth

Date of Decision:

Nov. 21, 94

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*Paula Ho-Wolper*

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George Stanley Guth

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