

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Henry L. Rust

93-04254

Name of Respondents

Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc.
Michael Brandes

REPRESENTATION

For Claimant Henry L. Rust ("Claimant"): appeared pro se

For Respondents Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc. ("Shearson") and Michael Brandes ("Brandes"): Sean J. Coughlin, Associate General Counsel of Smith Barney, Inc.

CASE INFORMATION

Statement of Claim filed: October 8, 1993

Claimant's Response to the Amended Statement of Answer and Counterclaim filed on: January 24, 1994

Claimant's Submission Agreement signed on: October 8, 1993

Joint Statement of Answer filed by Respondents Shearson and Brandes ("Respondents") on: December 31, 1993

Amended Joint Statement of Claim and Counterclaim filed by Respondents on: January 7, 1994

Shearson's Submission Agreement signed on: January 6, 1994

Brandes's Submission Agreement signed on: January 13, 1994

HEARING INFORMATION

Hearing Date/Sessions: September 28, 1994 - two sessions

Hearing Location: NASD Executive Office, Washington, D.C.

CASE SUMMARY

Claimant alleged that Brandes made a large unauthorized purchase in American Capital Trust For Income Fund - C ("Fund"). Claimant alleged that immediately upon receipt of the confirmation, he notified Respondents that the trade was not authorized. Claimant alleged that he had requested but had not yet received a prospectus for the Fund.

Respondents maintained that the trade was in fact authorized and that Claimant had changed his mind after the transaction was completed. Respondent Shearson asserted a counterclaim against Claimant for the balance due for the losses and fees incurred in liquidating the Fund.

Claimant denied any liability to Shearson on the counterclaim it asserted against him.

RELIEF REQUESTED

Claimant requested approximately \$6,000 in damages and that Respondent Shearson's counterclaim be denied.

Respondents requested that Claimant claim be dismissed in its entirety and that Shearson be awarded the amount of \$4,377.80 plus interest on its counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

This case was originally submitted for simplified arbitration. On June 7, 1994, Claimant requested a hearing and that request was granted.

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. That Respondents are jointly and severally liable to the Claimant and shall pay Claimant the sum of \$6,000, inclusive of interest through September 30, 1994 and late charges.

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2. That Respondents counterclaim is denied in its entirety.

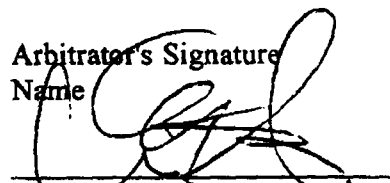
FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$200 = \$400 in hearing session fees are assessed.

Forum Fees Assessed Against: Equally against Claimant and Respondents. Claimant is assessed forum fees in the amount of \$200; however, Claimant is entitled to offset this amount with his hearing session deposit of \$200, so that no more monies are due from Claimant. Respondents are jointly and severally assessed forum fees in the amount of \$200, however, Respondents are entitled to offset this amount with their hearing session deposit of \$300. Therefore the NASD will refund to Respondent \$100.

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

Arbitrator's Signature
Name 

Marvin Elster, Esq.

 Public/Industry

NASD Date of Decision: September 30, 1994