

**N.A.S.D. AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Skapinskas Yonas

93-04740

Names of Respondents

Shearson Lehman Hutton, Inc.

Gerald Olin

Lawrence Brachfield

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**REPRESENTATION**

For Claimant, Skapinskas Yonas ("Yonas"): Martin A. Feigenbaum, Esq. of Miami, Florida.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson"), Gerald Olin ("Olin") and Lawrence Brachfield ("Brachfield"): Ann Parry, Esq. of Shearson Lehman Brothers, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed: 11/15/93.

Claimant's Submission Agreement signed on: 11/5/93.

A joint Statement of Answer filed by Respondents, Shearson, Olin and Brachfield on: 7/22/94.

Respondent, Shearson's Submission Agreement signed on: 7/19/94 by Ann Parry, Esq. on behalf of Shearson.

Respondent, Olin's, Submission Agreement signed on: 7/27/94.

Respondent, Brachfield's Submission Agreement signed on: 7/27/94.

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### HEARING INFORMATION

Hearing Date/Sessions: 1-23-95/two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

### CASE SUMMARY

Claimant alleged that he owned six shares of Berkshire-Hathaway, Inc. ("BRK") which he had acquired over a period of approximately three years; that he is a native of Lithuania and that before he departed on a trip at the end of May, 1993 he informed his account executive at Smith Barney, Gerald Olin, of his impending trip with instructions to enter a stop loss order if the stock reached a level of \$12,735 per share during his absence; that he had purchased his last share of BRK on May 25, 1993, at a price of \$14,150; that the stop-loss figure was set at exactly 10% of that last purchase price; that he also left information with Smith Barney prior to his departure of his destination in Lithuania and a phone number where he could be reached; that he also informed Mr. Olin and Smith Barney that he would be in Lithuania for approximately three months. Claimant further alleged that at no time during his absence did Mr. Olin or Smith Barney contact him; that upon his return to Miami in late August, 1993, he learned that Respondents had sold six shares of BRK at \$14,580 per share; that he protested to the Respondents that sale of his six shares of BRK at that price was a violation of his specific instructions to only sell his BRK at 10% below his last purchase price or, that is, a price of \$12,735 per share; that Respondents failed and refused to admit their mistake and return Claimant six shares of BRK; Claimant further contended that he is entitled to benefit from the rise in price during the pendency of this arbitration during which time Respondents refused to mitigate their damages.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant, on May 25, 1993, prior to his leaving the country for a vacation, specifically authorized changing the original stop-loss price of \$12,735, which had been set that day, on Claimant's six shares of Berkshire Hathaway, Inc. stock; that, in that regard, Claimant instructed that it be maintained at approximately 10% below the market price, in the event that the stock price moved up higher while he was in Europe; that pursuant to those instructions and as a result of an increase in the price of Berkshire Hathaway on June 4, 1993, Olin entered a new stop-loss order at \$14,580 per share. Respondents further alleged that on July 1, 1993, the stop was touched off and the stock was sold at \$14,500 per share, earning Claimant a total profit of \$35,417.23; that at all relevant times Olin had written discretionary authorization with respect to Claimants' account.

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### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$61,901.19 including costs of \$850.00 and attorney's fees of \$8,440.00.

Respondents requested dismissal of the Claim in its entirety.

### **OTHER ISSUES CONSIDERED & 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.

### **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. Respondents, Shearson, Olin and Brachfield, are found liable, jointly and severally and shall pay to Claimant the amount of \$14,000.00.
2. Claimant's requests for costs and attorney's fees are hereby denied.

### **OTHER COSTS**

The parties shall each bear their own costs and expenses incurred in connection with this proceeding including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$1,200.00 (two (2) hearing sessions X \$600.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$600.00 for which the NASD shall retain the \$600.00 previously deposited by Claimant in full satisfaction thereof.

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2. Respondents, Shearson, Olin and Brachfield, are hereby assessed Forum Fees, jointly and severally, in the amount of \$600.00, to be paid directly to the NASD, Inc.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/

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Irving I. Hanzman

Industry/Panelist

/s/

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Robert J. Hyman, Esq.

Public/Panelist

**Dissenting Arbitrator's Signature**

/s/

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Louise T. Jeroslow, Esq.

Public/Chairperson

Date of Decision: **February 10, 1995**