

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Shirley Garsten

93-04940

Name of Respondents

Shearson Lehman Brothers, Inc.  
Jeff Kaplan

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on December 3, 1993, Claimant Shirley Garsten, who appeared Pro Se, alleged that upon the strong recommendation of Respondent Jeff Kaplan ("Kaplan"), a broker at Respondent Smith Barney Shearson, Inc. ("Shearson"), she purchased 200 shares of Principal Growth Mortgage II L.P. ("Principal L.P."). Claimant further alleged that this recommendation was unsuitable for her retirement account. Claimant contended that Respondents failed to price this investment on her statements in a timely fashion. Claimant further contended that Respondents failed to disclose to her the true value of the Principal L.P. on the telephone when she requested its value. In her Response to Respondents' Answer, Claimant alleged that she only earned \$20,000.00 per year, and that she did not have an account at another brokerage house. Claimant further alleged that her handwriting was not on the New Account Application referred to as hers in Respondents' Answer. As a result of the above, Claimant contended that she has suffered damages for which the Respondents should be held liable.

Respondents Smith Barney Shearson, Inc. and Jeff Kaplan, through Respondent Shearson's in-house counsel Ellen Slipp, Esq., New York, New York, maintained that they fully and accurately described the characteristics, including the associated risks, of the Principal L.P. to Claimant before she purchased this for her account. Respondents further maintained that on Claimant's New Account Application, she indicates that she has an estimated total net worth of \$125,000.00 and earns approximately \$45,000.00 annually. Respondents

contended the Principal L.P. investment was suitable for Claimant. Respondents further contended that Claimant received a prospectus which outlined the risks of the Principal L.P. investment. Respondents maintained that Claimant's monthly statements indicated that with respect to the stated value of the limited partnership investment, "face amounts do not necessarily reflect current market value". Respondent Kaplan denied that he ever informed Claimant that the Principal L.P. investment was "doing great". As a result of the above, Respondents contended that they should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimant Shirley Garsten requested \$2,000.00 in actual damages, \$1,200.00 in interest, and \$800.00 in punitive damages.

Respondents Smith Barney Shearson, Inc. and Jeff Kaplan requested that the Claimant's Statement of Claim be dismissed in its entirety.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Dorothy F. Gray, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 26, 1993, by Respondent Smith Barney Shearson, Inc. on April 26, 1994, and by Respondent Jeff Kaplan on May 6, 1994.

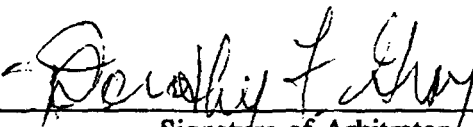
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Shirley Garsten against Respondents Smith Barney Shearson, Inc. and Jeff Kaplan are dismissed in their entirety.
2. The Claimant's claim for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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**AFFIRMATION**

I, **DOROTHY F. GRAY, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

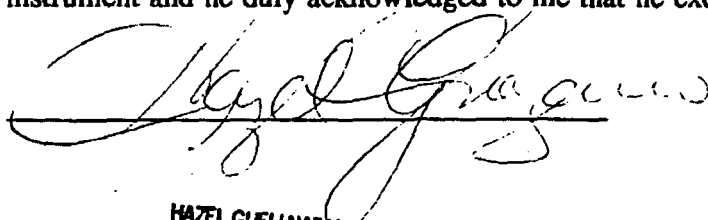
  
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Signature of Arbitrator

DATE OF DECISION: September 7, 1994

STATE OF NY ss.:

COUNTY OF NY

On this 2nd day of Sept 19 92, before me personally appeared to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



HAZEL GUELL-NAZARIO  
Notary Public, State of New York  
NO. 24-4986738  
Qualified in New York County  
Commission Expires September 23, 1995