

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

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

In the matter of the Arbitration Between

**Name of Claimant(s)**

Sarah Howell Lewis

NASD Arbitration  
No. 93-04968

**Name of Respondent(s)**

Liberty Capital Markets, Inc.  
Doyle Holmes

---

**REPRESENTATION**

For Claimant: Leslie A. Blau, Esq. and Robert C. Rubenstein, Esq.,  
Blau & Kokoszka, Chicago, Illinois

For Respondents: David M. Grey, Esq., Turner, Cooper and Reynolds,  
Irvine, California

**CASE INFORMATION**

Statement of Claim filed: November 30, 1993  
Claimant's Reply to Counterclaim filed: March 24, 1994  
Claimant's Submission Agreement signed: November 29, 1993

Respondents' Joint Statement of Answer and Liberty Capital Markets,  
Inc.'s Counterclaim filed: February 16, 1994  
Respondents' Submission Agreements signed: February 15, 1994

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s):  
October 19, 1994 (one session)  
October 25, 1994 (one session)

Hearing Date(s)/Session(s):

October 26, 1994 (two sessions)

November 21, 1994 (three sessions)

Hearing Location: Los Angeles, California

**CASE SUMMARY**

Claimant alleged that the President of Liberty Capital Markets, Inc. (Liberty Capital), Doyle Holmes, deliberately placed a false and malicious statement about Claimant on Merrill Lynch's Employment/Educational Reference Verification Form. Claimant further alleged that Respondents breached the written commitment they made to Liberty Capital employees.

Respondents denied Claimant's allegations of wrongdoing and alleged as an affirmative defense, among others, that shortly after Claimant's departure, Liberty Capital received Merrill Lynch's Employment/Educational Reference Verification Form indicating that Merrill Lynch had accepted Claimant for employment and requesting that Liberty Capital furnish information requested on the form to Merrill Lynch. Respondents further alleged that Merrill Lynch's form indicated that the response would be both appreciated and kept in confidence; and that the form was signed by Claimant, and specifically stated that Claimant authorized release of the information to Merrill Lynch. Respondents further alleged that although Liberty Capital's employee manual provides that only limited personal information that Liberty Capital obtains about its employees will be provided to responses to inquiries outside the firm, this limitation was voluntarily and expressly waived by Claimant when Claimant signed the consent form forwarded by Merrill Lynch. Respondent further alleged that the information provided about Claimant was accurate.

In its Counterclaim against Claimant, Liberty Capital alleged breach of contract, unfair competition - misappropriation of trade secrets, defamation and slander.

Claimant denied the allegations of wrongdoing set forth in Liberty Capital's Counterclaim.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$30,000.00 and requested attorney's fees.

Respondents requested that Claimant take nothing by her Complaint; damages subject to proof for the Counterclaims; and requested attorneys' fees, costs, and such other and further relief as may be proper.

### OTHER ISSUES CONSIDERED AND DECIDED

Following the conclusion of Claimant's presentation of testimony and evidence during hearing sessions conducted on October 26, 1994, the panel of arbitrators considered Respondents' Motion for nonsuit and granted the Motion and dismissed Claimant's claims.

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 Liberty Capital Markets, Inc. are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

### FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$300.00 hearing session deposit previously deposited by Claimant Sarah Howell Lewis and shall retain the \$600.00 hearing session deposit previously deposited by Respondent Liberty Capital

Markets, Inc. Forum fees are to be split between Sarah Howell Lewis and Liberty Capital Markets, Inc. and are calculated as follows:

Two pre-hearing sessions @ \$300.00/session	=	\$ 600.00
Five hearing sessions @ \$300.00/session	=	\$1,500.00
Total fees assessed	=	\$2,100.00

Sarah Howell Lewis' share (50%)	=	\$1,050.00
Credit for hearing deposit	=	\$ 300.00
Balance due	=	\$ 750.00

Liberty Capital Markets, Inc.'s share (50%)	=	\$1,050.00
Credit for hearing deposit	=	\$ 600.00
Balance due	=	\$ 450.00

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

#### ARBITRATORS

Name ..... Public / Industry

Gilbert E. Haakh, Esq.

Public Arbitrator

Robert G. Sether

Public Arbitrator

John P. McShane

Industry Arbitrator

#### Concurring Arbitrators' Signatures

\_\_\_\_\_  
Gilbert E. Haakh, Esq.

\_\_\_\_\_  
Robert G. Sether

\_\_\_\_\_  
John P. McShane

Date of Decision: 11-21-94

Date Served: 12-22-94

Markets, Inc. Forum fees are to be split between Sarah Howell Lewis and Liberty Capital Markets, Inc. and are calculated as follows:

Two pre-hearing sessions @ \$300.00/session	=	\$ 600.00
Five hearing sessions @ \$300.00/session	=	\$1,500.00
Total fees assessed	=	\$2,100.00

Sarah Howell Lewis' share (50%)	=	\$1,050.00
Credit for hearing deposit	=	\$ 300.00
Balance due	=	\$ 750.00

Liberty Capital Markets, Inc.'s share (50%)	=	\$1,050.00
Credit for hearing deposit	=	\$ 600.00
Balance due	=	\$ 450.00

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

#### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Gilbert E. Haakh, Esq.	Public Arbitrator
Robert G. Sether	Public Arbitrator
John P. McShane	Industry Arbitrator

#### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Gilbert E. Haakh, Esq.

\_\_\_\_\_  
Robert G. Sether

\_\_\_\_\_  
John P. McShane

Date Served: 12-22-94

Date of Decision: \_\_\_\_\_

Markets, Inc. Forum fees are to be split between Sarah Howell Lewis and Liberty Capital Markets, Inc. and are calculated as follows:

Two pre-hearing sessions @ \$300.00/session	=	\$ 600.00
Five hearing sessions @ \$300.00/session	=	\$1,500.00
Total fees assessed	=	\$2,100.00

Sarah Howell Lewis' share (50%)	=	\$1,050.00
Credit for hearing deposit	=	\$ 300.00
Balance due	=	\$ 750.00

Liberty Capital Markets, Inc.'s share (50%)	=	\$1,050.00
Credit for hearing deposit	=	\$ 600.00
Balance due	=	\$ 450.00

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

**ARBITRATORS**

Name ..... Public / Industry

Gilbert E. Haakh, Esq.	Public Arbitrator
Robert G. Sether	Public Arbitrator
John P. McShane	Industry Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Gilbert E. Haakh, Esq.

  
\_\_\_\_\_  
Robert G. Sether

\_\_\_\_\_  
John P. McShane

Date of Decision: \_\_\_\_\_

Date Served: 12-22-94