

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Sidi Sternfeld**

**93-05147**

**Name of Respondent**

**Shearson Lehman Brothers, Inc.**

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**REPRESENTATION**

**For Claimant Sidi Sternfeld ("Claimant") appeared David B. Wasserman, Esq., of the law firm of Wasserman & Schachman, located in Bloomfield, New Jersey.**

**For Respondent Shearson Lehman Brothers, Inc. ("Respondent") appeared Ann Parry, Esq., Vice President and Associate General Counsel of Smith Barney Shearson, Inc.**

**CASE INFORMATION**

**Statement of Claim filed: December 10, 1993.**

**Claimant's Submission Agreement signed on: February 24, 1994.**

**Statement of Answer filed: April 19, 1994.**

**Amended Statement of Answer filed: June 30, 1994.**

**Respondent's Submission Agreement signed on April 19, 1994.**

**HEARING INFORMATION**

**Hearing Date/Sessions: January 19, 1995 - Two Sessions**

**The first hearing session was held at Fraunces Tavern located at 54 Pearl Street, New York, New York. The second hearing session was held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.**

## CASE SUMMARY

Claimant alleges that Brian Dillon, an employee of Respondent, traded securities in her account without authorization. Claimant alleged that, in late December, 1990 or early January, 1991, she scheduled a meeting with Mr. Dillon to discuss various strategies by which to increase her portfolio yield. However, Claimant alleged that when she arrived at Respondent's office Mr. Dillon told her that they had to reschedule their appointment because the conference room was in use. Claimant further alleged that no specific action was agreed upon, except that another appointment was scheduled.

Claimant alleged that shortly after, she received a confirmation from Respondent which indicated that three securities had been traded in her account. Claimant further alleged that she immediately called the Respondent and indicated that she had not authorized these trades and that, in a subsequent meeting with Mr. Dillon and his supervisor, Mr. Cohen, Mr. Dillon admitted that he had not been authorized to trade Claimant's securities. Claimant also alleged that Mr. Cohen agreed that the trades had been improper, yet, no one offered to reverse the trades. Finally, Claimant alleged that as a result of the unauthorized trades she suffered losses of \$7,656.00.

Respondent maintained that Claimant fully authorized the transactions in her account. Respondent further maintained that, despite Claimant's allegations to the contrary, on January 15, 1991, Claimant met with Mr. Dillon in his office, during which time Claimant authorized Mr. Dillon to liquidate her position in the Franklin Custodial Growth Fund, the Putnam Convertible Income Growth Trust and the Phoenix Ser FD SBI Growth Fund. Respondent further maintained that during the meeting Claimant also authorized Mr. Dillon to purchase the Shearson Diversified Strategic Income Fund, the Shearson Short Term Global Income Fund and the Franklin Investors Securities Trust. In addition, Respondent maintained that Mr. Dillon and Claimant discussed the fact that she would incur losses in selling her Franklin, Putnam and Phoenix funds.

Respondent maintained that subsequent to the January, 1991 meeting, Claimant met with Mr. Dillon and Mr. Cohen on two occasions to discuss her concerns with the performance of her account. Respondent also maintained that at neither of these meetings did Claimant assert that the transactions were unauthorized. Respondent further maintained that during the first meeting they discussed possible ways to enhance the income in Claimant's account and that Claimant subsequently authorized Mr. Dillon to transfer her positions in the SLB Short Term World and Short Term Global funds into the SLB Diversified Strategic Income fund. Respondent further maintained that during the second meeting Claimant complained that, because the market had not declined during the war as Mr. Dillon had expected, her original investments had appreciated and, therefore, they should not have been sold. In addition, Respondent maintained that Claimant complained that Mr. Dillon did not disclose to her the amount of

commissions he would receive on the trades and, therefore, Mr. Cohen offered to return to Claimant \$1600.00, which was the approximate amount of the commissions Mr. Dillon received.

Respondent maintained that Claimant failed to state in her Statement of Claim that she realized a gain of \$3,861.20 on the sale of Franklin Custodial Growth Fund and, therefore, Claimant's actual loss was not \$7,656.00 as she alleged. As affirmative defenses, Respondent maintained that Claimant failed to state a claim upon which relief may be granted, that Respondent did not violate any rules, regulations or applicable laws, that Claimant's claims are barred by the doctrines of ratification, waiver, and estoppel. In addition, Respondent maintained that Claimant's losses were caused by her own actions and not by any wrongdoing on the part of Respondent. Respondent further maintained that Claimant is barred from recovering punitive damages pursuant to the terms of her client agreement and under New York law.

### **RELIEF REQUESTED**

Claimant requested damages of \$7,656.00 representing \$4,262.00 for the loss on the sale of Putnam Convertible, \$1,123.00 for the loss on the sale of Phoenix Growth, and \$2,291.00 for the loss on the sale of World & Global funds. In addition, Claimant requested \$2,000.00 in punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety.

### **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. Respondent be and hereby is liable and shall pay to the Claimant the sum of \$1,690.00 plus interest of 9% per annum from April 1, 1993 until the date of payment.
2. Each party shall bear their respective costs, including attorneys fees, except that Respondent is liable and shall pay \$37.50 to the Claimant to reimburse Claimant for a portion of the fees paid to the NASD by the Claimant.
3. Claimant's request for punitive damages be and hereby is denied.
4. All other claims be and hereby are denied.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

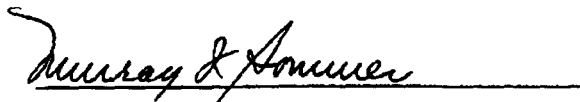
claim filing fee:	\$75.00
2 hearing sessions x \$200.00:	<u>\$400.00</u>
<b>Total forum fees assessed:</b>	<b>\$475.00</b>
minus fees previously deposited by Claimant:	<u>\$275.00</u>
<b>Total forum fees outstanding:</b>	<b>\$200.00</b>

The arbitrators have assessed the forum fees against:

1. Claimant be and hereby is liable for the sum of \$237.50 representing one-half of the forum fees assessed. Claimant previously deposited the sum of \$275.00 with the NASD which shall be applied toward the forum fees assessed. Therefore, nothing is owed to the NASD by the Claimant.
2. Respondent be and hereby is liable for the sum of \$237.50 representing one-half of the forum fees assessed. Respondent is liable and shall pay to the NASD the sum of \$200.00 representing the outstanding balance of the forum fees due and owing to the NASD.

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

### ARBITRATORS' SIGNATURE



Murray I. Sommer, Esq.  
Public Chairperson

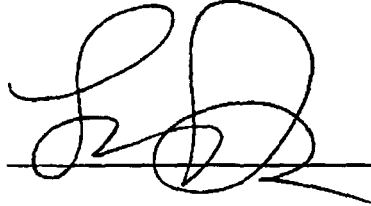
Date of Decision: March 9, 1995

STATE OF: *New York*

COUNTY OF: *New York*

ss:

On this *8<sup>th</sup>* day *March*, 1995, before me personally appeared **Murray I. Sommer, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves, positioned above a horizontal line.

LYNN A. PUCINO  
Notary Public, State of New York  
No. 37-00PU5012176  
Qualified in New York County  
Commission Expires June 15, 1995