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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lew Lieberbaum & Co., Inc.

94-00332

Name of Respondents

Joselito George Villanueva De Castro
Edward John Barter
Muriel J. Barter

REPRESENTATION

For Claimant Lew Lieberbaum & Co., Inc. ("Lieberbaum"): Jay Marc Israel, Esq. of Lew Lieberbaum & Co., Inc. located in Garden City, New York.

For Respondent Joselito George Villanueva De Castro ("De Castro"): Respondent De Castro appeared pro se.

For Respondent Edward John Barter: Respondent Edward Barter appeared pro se.

For Respondent Muriel J. Barter: Respondent Muriel Barter did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: January 25, 1994.

Claimant's Submission Agreement signed on: January 25, 1994.

Statement of Answer filed by Respondent De Castro on: March 29, 1994.

Respondent De Castro's Submission Agreement signed on: September 12, 1994.

Statement of Answer filed by Respondent Edward Barter on: May 9, 1994.

Claimant further alleged that Muriel Barter terminated her employment with Claimant on May 10, 1993 and repeatedly guaranteed repayment would be made. Claimant alleged as well that Edward Barter was terminated on November 15, 1993 and remained jointly and severally liable for repayments as well.

Claimant alleged that as of the date of Claimant's statement of claim, Respondents had only repaid the sum of \$28,386 on Claimant's advance of \$50,000.

Respondent De Castro maintained that Claimant sent two checks for \$25,000 were received by Respondents at their branch office, the first arriving at the end of March 1992 and the second around the middle of April. Respondent De Castro further maintained that he did not recall speaking with Claimant regarding the repayment of the advance and that he believed any requests for payments by Claimant would have been directed to Muriel Barter and not to himself. Respondent De Castro also maintained that he was not the person in charge of disbursements and that he believed that the repayments were being made to Claimant according to the schedule set forth in the Agreement. Respondent De Castro also maintained that he did not resign from Claimant on April 7, 1993 as Claimant alleged, but rather that he faxed a letter of resignation to Edward and Muriel Barter in October, 1992.

Respondent Muriel Barter maintained that on or about March 6, 1992 Lieberbaum, Muriel Barter and De Castro entered into the Agreement which provided that Lieberbaum would advance the sum of \$50,000 to Respondents' branch office so that Respondents could pay their brokers. Respondent Muriel Barter further maintained that prior to receiving the final \$25,000 installment Mark Lew, an employee of Claimant, suggested to Respondents that they join Claimant's downtown office. Respondent Muriel Barter further alleged that Mark Lew then started executing a plan to have Respondents' brokers join Claimant's corporate office. Respondent Muriel Barter maintained that Claimant's downtown office manager, Henry Zugaro ("Zugaro"), informed Respondents' brokers that Respondents were going out of business and that they were welcome to join Lieberbaum's downtown office. Respondent Muriel Barter also maintained that Zugaro met with Respondents' brokers and gave them paychecks that should have been delivered to Respondents' back office as some of the brokers owed money to Respondents' branch office and were not entitled to the checks. Respondent Muriel Barter also maintained that Lieberbaum cut Respondents' allocation of a new issue, All American Semi Conductor, on the morning of the issue after Respondents' branch office had placed all of their original allotment. Respondent Muriel Barter also maintained that Mark Lew and Zugaro convinced some of Respondents' largest producers to transfer to

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Respondent Edward Barter's Submission Agreement signed on: May 3, 1994.

Statement of Answer filed by Respondent Muriel Barter on: May 9, 1994.

Respondent Muriel Barter's Submission Agreement signed on: May 3, 1994.

HEARING INFORMATION

Hearing Date / Sessions: September 12, 1994 / One Session

Hearing Location: National Association of Securities Dealers Offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about March 6, 1992 Claimant and Respondents De Castro and Muriel Barter entered into an Independently-Owned Branch Office Agreement ("Agreement") which provided that Claimant would advance the sum of \$50,000 to Respondents.

Claimant further alleged that the Agreement provided that the advance would be repaid in five monthly installments, the first due on May 15, 1992 and the final installment due September 15, 1992. Claimants next alleged that De Castro and Muriel Barter agreed to personally guarantee the advance and were jointly and severally liable for the entire amount. Claimant alleged that it made several requests to Respondents for payment of the first installment payment of \$5,000, and that Respondents failed to make such payment. Claimants further alleged that as a result of De Castro and Muriel Barter's alleged breach of the Agreement, that Claimant and Respondents entered into a revised Agreement on June 25, 1992. Claimants alleged that the revised Agreement postponed the repayment of the advance. In addition, Claimants alleged that the revised Agreement provided that Edward Barter be included in the original Agreement and therefore became jointly and severally liable with Decastro and Muriel Barter for the entire balance.

Claimant further alleged that De Castro terminated his employment with Lew Lieberbaum on April 7, 1993 and that De Castro remained liable for repayment of the advance.

Claimant alleged that on April 21, 1993 the Agreement was again revised to provide that Claimant would receive a minimum of \$500 on the 15th of every month plus an additional 20% of the gross commissions generated by Edward Barter.

Lieberbaum and that Mark Lew had no intention of maintaining Respondents' branch office. Respondent Muriel Barter maintained that she was informed by Mark Lew that Respondents' branch would not be included in any allocations and that Mark Lew forced her to resign.

Respondent Edward Barter maintained that he never entered into an Independently-Owned Branch Office Agreement with Claimant. Respondent Edward Barter further maintained that he was not registered with Claimant at the time of the Agreement and that he did not submit his U-4 until April 3rd, 1992 twenty eight days after the agreement had been signed.

Respondent Edward Barter maintained that on June 25, 1992 he signed the revised Agreement under pressure from Mark Lew. Respondent Edward Barter also maintained that under the agreement Lieberbaum was to receive \$500 on the 15th of each month plus 20% of gross commissions generated. Respondent Edward Barter further maintained that Lieberbaum did not live up to the agreement as Lieberbaum received 3 checks for \$500 but retained 100% of commissions and overrides. Respondent Edward Barter also maintained that he did not terminate his employment with Lieberbaum on November 15, 1993, rather, he maintained that Mark Lew informed him he was terminated after he had tried to call in a trade without the 90 day notice provided for in the Independently-Owned Branch Office Agreement, to which Edward Barter was added by an amendment dated June 25, 1992.

RELIEF REQUESTED

Claimant requested:

1. An award from the Arbitrators against De Castro, Muriel Barter and Edward Barter, jointly and severally, for the sum of \$21,614.
2. Pre-Award interest.
3. Attorneys' fees, costs of filing this action and such other relief as the Panel deems fit and proper.

Respondent De Castro Requested:

1. Claimant's claims be dismissed.

Respondent Muriel Barter Requested:

1. Claimant's claims be dismissed.

Respondent Edward Barter Requested:

1. Claimant's claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Muriel Barter did not appear at the September 12, 1994 hearing in this matter. At the September 12, 1994 hearing Respondent Edward Barter presented the arbitrator with a letter, dated September 9, 1994, from Muriel Barter in which Muriel Barter stated she could not attend the hearing due to health reasons. Respondent Muriel Barter requested that the arbitrator accept her written answer to Claimant's statement of claim and the arbitrator and the parties present agreed to proceed with the hearing.

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. All claims against Edward Barter are dismissed.
2. Respondents Joselito George Villanueva De Castro and Muriel J. Barter are jointly and severally liable to pay Claimant Lew Lieberbaum & Co., Inc. the sum of \$10,000.
3. All claims for fees and interest are dismissed.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 session X \$300 = \$300.

Forum fees Assessed Against:

Claimant is assessed \$300 which represents the total forum fees due, less \$300 hearing session deposit paid leaving \$0 due.

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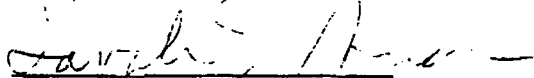
Fees are payable to the National Association of Securities Dealers. Inc.

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Arbitrator's Signature

Name



Sarah G. Anderson, Esq.

Industry Chairperson

Date of Decision: October 17, 1994