

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Lea Lerman

94-00523

Name of Respondent

Lew Lieberbaum & Co., Inc.

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**REPRESENTATION**

For Claimant Lea Lerman ("Lerman") appeared LLoyd S. Clareman, Esq., located in New York, New York.

For Respondent Lew Lieberbaum & Co., Inc., ("Lieberbaum") appeared Larry Sandor, Esq., of Lieberbaum located in Garden City, New York.

**CASE INFORMATION**

Statement of Claim filed on: February 11, 1994.

Claimant's Submission Agreement signed on: February 4, 1994.

Statement of Answer filed by Respondent Lieberbaum on: May 26, 1994.

Respondent Lieberbaum's Submission Agreement signed on: May 26, 1994

Third Party Claim filed by Respondent Lieberbaum on: May 18, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions:	October 17, 1995	-	2 sessions
	November 17, 1995	-	1 session

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in New York, New York.

**CASE SUMMARY**

Claimant alleged that she was recommended unsuitable investments which failed to offer what was promised. Moreover, according to the Claimant, these investments offered the opposite of what she was promised: almost no opportunity for profit and an enormous exposure to risk of loss. In addition, the Claimant alleged that these risks were deliberately concealed by the Respondent. Lerman contended that the Respondent's recommendations consisted of the following: that Ms. Lerman (1) purchase large

quantities of a highly speculative stock called Immune Response, margined to "the hilt", and (2) simultaneously sell a corresponding number of call option contracts. According to the Claimant, although this strategy might sound like a conventional covered call it was not because the options when sold were already "in the money." As a result, the Claimant maintained that regardless of whether the stock appreciated or declined in value she could not benefit. Lerman further contended that this strategy was falsely and misleadingly explained to her.

Based upon the above allegations, the Claimant averred the following causes of actions: 1) common law fraud; 2) violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; 3) violation of various NASD and NYSE rules, 4) respondeat superior and control person liability provisions of the Securities Exchange Act of 1934.

Respondent Lieberbaum denied the existence of any alleged acts, liability, or implications thereof, as contained in the Statement of Claim. Lieberbaum further alleged that all transactions executed by Lieberbaum were suitable for Lerman's portfolio based upon the information Lerman provided on the Options Agreement. The following affirmative defenses were raised by Respondent Lieberbaum:

1) failure to state a cause of action against Lieberbaum upon which relief could be granted; 2) ratification; 3) Claimant's failure to notify Lieberbaum's Compliance Department or Management about any disputed transactions executed in her account; 4) Lerman authorized and directed the execution of all transactions in her account; 5) equitable doctrine of estoppel; 6) Lieberbaum in discharging its duties if any to Lerman, acted in good faith and exercised at least that degree of care, diligence, and skill which an ordinarily prudent person would exercise in similar circumstances and like positions; 7) the Arbitration Panel does not have the power or authority to award punitive damages in this arbitration.

Respondent Lieberbaum also brought a Third-Party Claim against Bryan Cantwell ("Cantwell") for total equitable indemnity, partial indemnity and contribution for damages, if any, recovered by Lerman against Lieberbaum. Lieberbaum contended that because Cantwell was the broker of record for this account, he should contribute to any award issued by the arbitration panel under the principles of total equitable indemnification, partial indemnification and contribution.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$33,227.12 with interest at the legal rate of 9% per annum from June 1993. In addition the Claimant requested punitive damages against the Respondent to be assessed by the panel.

Respondent Lieberbaum demanded dismissal of this Arbitration with prejudice, plus expenses, costs and attorneys fees. In addition Lieberbaum requested such other relief as the Panel deemed just and proper.

The Respondent/Third-Party Claimant Lieberbaum requested that a judgment be entered against Third-Party Respondent Cantwell in an amount to be proven at arbitration based on the principles of contribution and indemnification.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Due to an emergency, arbitrator Kelly was unable to participate in the third hearing session. The parties thus agreed to go forward with the two remaining, undersigned arbitrators and furthermore agreed to have the decision rendered by those two arbitrators.

### **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. Respondent Lieberbaum is liable to Claimant Lerman in the amount of **FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00)**.
2. All parties bear their own costs and split forum fees equally.
3. All other claims by parties are denied.

### **FORUM FEES**

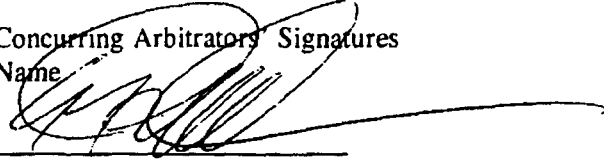
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable filing fee:	\$ 120.00
Hearing Sessions (3 @ \$400 per session):	<u>\$1,200.00</u>
Total Fees:	\$1,320.00

1. The Claimant paid \$520.00 and owes \$200.00 to the NASD.
2. The Respondent owes \$600.00 to the NASD.

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


Concurring Arbitrators' Signatures  
Name

  
G. Robert Abrams  
Chairperson

Industry

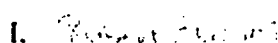
  
Burton M. Fendelman, Esq.

Industry

  
Kevin M. Kelly

Industry

**AFFIRMATION**

I,  do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules that this is my decision in the above captioned matter.

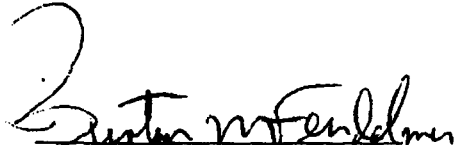


Date of Decision: January 31, 1996

Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_  
G. Robert Abrams  
Chairperson

Industry

  
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Burton M. Fendelman, Esq.

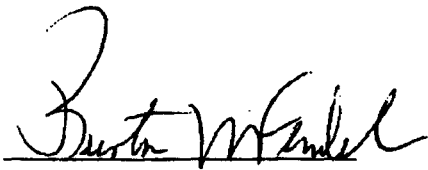
Industry

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Kevin M. Kelly

Industry

**AFFIRMATION**

I, BURTON M FENDELMAN do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules that this is my decision in the above captioned matter.

  
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Date of Decision: January 31, 1996