

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Leanna Lea Brown

94-01778

Name of Respondents

Shearson Lehman Hutton  
n/k/a Smith Barney, Inc.  
Paul Henley

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on May 12, 1994, Claimant Leanna Lee Brown, through her representative, Robert M. Roth, Appleton, WI, alleged that her husband "basically" gave Respondent Paul Henley ("Henley") full discretion for all transactions in her account, and that Respondent Henley purchased 200 shares of Regina Co., Inc. ("Regina") stock for her account with Respondent Shearson Lehman Hutton n/k/a Smith Barney, Inc. ("Shearson"). Claimant further alleged that the Regina stock was highly speculative, and that Respondent Henley did not disclose the speculative nature of this security or the risks involved in making such a purchase. Claimant alleged that the Regina stock was unsuitable for Claimant. Claimant further alleged that the Regina stock was "marked up" 6.25%, which is well above the NASD's guidelines. Claimant contended that Respondent Shearson "took a commission (mar down) of over 15% of the sales price" when the Regina stock was sold, which was substantially higher than NASD guidelines. Claimant further contended that Respondents falsely and fraudulently made misleading statements with the intent to defraud and deceive Claimant. Claimant further contended that Respondents breached their fiduciary duty to her. Claimant further contended that Respondents negligently exposed her to an unreasonable amount of risk of serious harm, and in fact have caused her serious harm. As a result of the above, Claimant alleged that she has suffered damages for which Respondents should be held liable.

Respondents Shearson Lehman Hutton n/k/a Smith Barney, Inc. and Paul Henley, through their representative Ann Parry, Esq., New York, New York, maintained that Claimant, upon opening her account with Respondents, indicated to Respondent Henley that her investment objective was capital appreciation. Respondents further maintained that when Claimant moved to Arizona and opened an account with Respondent Shearson in Phoenix, she indicated appreciation with risk to be one of her investment objectives. Respondents contended that Claimant ratified the purchase of Regina stock and thus is estopped from now complaining that the trade was unauthorized. Respondents further contended that the investment in question was suitable for Claimant's investment objectives. As a result of the above, Respondents maintained that they should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Leanna Lea Brown requested not less than \$1,000.00 in actual damages, pre-award and post-award interest at 10% in an amount not less than \$500.00, and costs, including reasonable consulting fees, in an amount not less than \$550.00.

Respondents Shearson Lehman Hutton n/k/a/ Smith Barney, Inc. and Paul Henley requested that the Claimant's claim be dismissed in its entirety, and that they be awarded their costs.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Matthew R. Gould, 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 April 26, 1994, by Respondent Shearson Lehman Hutton n/k/a Smith Barney, Inc. on August 29, 1994, and by Respondent Paul Henley (without proper notarization) on September 28, 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. Respondents Shearson Lehman Hutton n/k/a Smith Barney, Inc. and Paul Henley are jointly and severally liable and shall pay to Claimant Leanna Lea Brown \$1,000.00 in actual damages.
2. Respondents Shearson Lehman Hutton n/k/a Smith Barney, Inc. and Paul Henley are jointly and severally liable and shall pay to Claimant Leanna Lea Brown simple interest at the rate of 10% per annum from May 12, 1989 to the date of decision.
3. The parties shall bear their respective costs.
4. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Shearson Lehman Hutton n/k/a Smith Barney, Inc. and Paul Henley are jointly and severally liable and shall pay to Claimant Leanna Lea Brown \$30.00 as reimbursement of the filing fee.

**Affirmation**

STATE OF

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COUNTY OF

I, Matthew R Gould, do hereby affirm upon my oath  
as arbitrator that I am the individual described in and who executed this instrument,  
which is my oath and award.

Matthew R Gould  
Signature of Arbitrator

DATE OF DECISION: October 31, 1995