

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Anne Jardim

vs.

Case #  
94-01789

Name of Respondents

Shearson Lehman Brothers, Inc.

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**REPRESENTATION**

Claimant, Dr. Anne Jardim ("Claimant"), represented herself at the hearing

For Respondent, Smith Barney Shearson, Inc. ("Respondent"), George Richardson, III, Esq., in house-counsel located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on May 11, 1994.

Claimant's Submission Agreement was signed on May 9, 1994.

Amended Statement of Claim was filed on January 13, 1995.

Respondent's Statement of Answer was filed by Respondent on August 15, 1994.

Respondent's Submission Agreement was signed on August 12, 1994.

Answer to Amended Statement of Claim was filed on February 17, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions: May 3, 1995 - 2 sessions

Hearing Location: American Arbitration Association, 133 Federal Street, 11th Floor, Boston, Massachusetts.

**CASE SUMMARY**

Claimant alleges that she purchased 5,000 shares of Compaq stock and that after watching the performance of the stock, she contacted Greg Venit, registered representative at the

Respondent's firm, for the firm's position on this stock. Claimant also alleges that she wanted to know the firm's position because she was unable to get information elsewhere.

Claimant further alleges that based upon the information given to her she sold the stock which later increased in value. Claimant contends that had Mr. Venit correctly explain Respondent's position and its rating on this stock, she would not have sold the stock. Claimant also contends further that Mr. Venit's failure to fully explain Respondent's rating schedule, did not allow her to make an informed decision concerning whether to sell or hold the stock.

Respondent denies the allegations of wrong doing and denies liability to Claimant. Respondent argues that Claimant bought, held and sold the stock on her own and did not rely on anything Mr. Venit told her because that was the way she traded in the past.

#### **RELIEF REQUESTED**

Claimant requests an award of \$340,989 in actual damages, plus \$15,000 for Respondents dilatory actions in trying to resolve this dispute.

Respondent requests that the Statement of Claim be dismissed in its entirety and that costs be assessed against Claimant.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the original remain on file with the NASD.

#### **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:

In her pleading, correspondence and testimony, Claimant, precisely and exclusively ascribed to her broker the phrase: "Sell at the first sign of strength", as her broker's incorrect answer to her query of Smith Barney's current rating of Compaq Stock which she owned, Claimant relied on this alleged misstatement as the sole basis for her claim.

However, her close friend and confidant, Dr. Hennig, in testifying as to Claimant's telephone conversation on October 6, 1993 with her broker, recalled Claimant saying, "In other words, you're saying sell at the first sign of strength" (emphasis supplied).

Therefore, by hypothesis, the phrase "Sell at the first sign of strength", cannot be attributed to

the broker and can only represent Claimant's own interpretation of some other words spoken by broker in response to Claimant's request for Smith Barney's position on Compaq.

1. All claims for damages are denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed against Respondent.

Non-refundable Filing Fee - \$200.00

Hearing Session Fees - \$1,500.00 (2 hearing sessions x \$750.00 per session)

Total Fees - \$1,700.00

1. Claimant previously paid \$950.00 and is entitled to a refund.
2. Respondent shall satisfy the fees assessed by reimbursing Claimant \$950.00 and by remitting the balance, \$750.00, to the NASD.

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

#### **ARBITRATION PANEL**

Edward O. Proctor, Esq.	-	Public Chairperson
William P. Hurley	-	Public Panelist
Richard D. Jordan	-	Industry Panelist

Concurring Arbitrator's Signature

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William P. Hurley

Date of Decision: 6/16/95

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Richard D. Jordan	-	Industry Panelist

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Concurring Arbitrator's Signature

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Edward O. Proctor, Esq.

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