

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John B. Lewis

94-02320

Name of Respondents

Shearson Lehman Brothers, Inc. (n.k.a. Smith Barney, Inc.)  
Martin J. Bannon, III

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REPRESENTATION

Claimant John B. Lewis ("Claimant") was represented at the hearing by David R. Simonsen, Jr., Esq. and Vicki A. Verwey, Esq. of the Law Firm of David R. Simonsen, Jr.

Respondent Shearson Lehman Brothers, Inc. ("Smith Barney") and Martin J. Bannon, III ("Bannon") were represented at the hearing by Scott E. Kresch, Esq., First Vice President and Associate General Counsel, Office of the General Counsel, Smith Barney, Inc.

CASE INFORMATION

The Statement of Claim was filed on June 17, 1994.  
The Amended Statement of Claim was filed on June 30, 1995.  
The Reply to Counterclaim was filed on September 28, 1994.  
Claimant's Submission Agreement was signed on June 6, 1994.

The Statement of Answer and Counterclaim were filed by Respondents Smith Barney and Bannon ("Respondents") on September 16, 1994.  
The Statement of Answer and Counterclaim to the Amended Statement of Claim were filed by Respondents on July 15, 1995.  
Respondent Smith Barney's Submission Agreement was signed on September 13, 1994.  
Respondent Bannon's Submission Agreement was signed on October 3, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: July 18, 1995 - 2 sessions  
July 19, 1995 - 2 sessions

Hearing Location: Omni Richmond Hotel, Richmond, VA

**CASE SUMMARY**

Claimant was an institutional salesman for Smith Barney and predecessor firms from December 1991 until he resigned in May, 1994. Bannon was the manager of the Richmond office of Smith Barney and predecessor firms during the period of Claimant's employment.

Claimant alleged that Respondents, among other things:

- Count 1 - failed and refused to pay Claimant an agreed bonus of 15% on Claimant's first fourteen (14) months of production, between April 1, 1992 and May 31, 1993
- Count 2 - failed and refused to pay Claimant the agreed commissions at the rate of 75% on Claimant's production between June 1, 1993 and December 31, 1993 in accounts of former employees
- Count 3 - that Bannon, acting as agent, employee and manager of Smith Barney maliciously defamed Claimant with false allegations of improper and criminal conduct resulting in damages to Claimant's reputation, person and property.

Respondents asserted that the bonus "agreement" of 15% as stated in Count One is a fabrication. As to Count Two, Bannon, in the Statement of Answer dated July 13, 1995, categorically denied that such an agreement existed. However, under direct examination, Bannon admitted that such an agreement did exist, but stated that Claimant was more than amply compensated for his services in the latter part of 1993, despite a significant loss to Smith Barney allegedly caused by Claimant. As to Count Three, Smith Barney and Bannon categorically denied that such statements were ever made. Respondents counterclaimed that Claimant left behind a potential "syndicate bid" liability of \$65,000 and that Claimant's anticipated portion of such liability would be \$24,700. Respondents further stated that Smith Barney has been assessed \$6,500 or 10% of the potential liability, but no evidence was presented at the hearing to prove such monetary loss.

Claimant stated that the Counterclaim is based on hypothetical circumstances that are unlikely to occur.

**RELIEF REQUESTED**

Claimant requested unpaid bonus of \$38,000; unpaid commissions of \$17,400; \$100,000 in compensation for damages incurred because of Respondent's tortious acts of defamation; attorney's fees in approximate amount of \$8,700; all costs and fees be assessed against Smith Barney and Bannon and that Claimant be reimbursed for any deposits and/or payments to the NASD, punitive damages against Smith Barney and Bannon in an amount the arbitrators deem reasonable and appropriate, and that the tribunal issue a reasoned decision.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

**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. That Claimant's request for a reasoned decision is denied.
2. That Respondents' Counterclaim is dismissed without prejudice. The Panel noted, that at this time, no damages to Smith Barney have occurred; therefore, this claim is not ripe for resolution.
3. That Claimant's claim for punitive damages is denied in its entirety.
4. That Smith Barney and Bannon are jointly and severally liable and shall pay to the Claimant the sum of \$17,400; inclusive of interest.
5. That the parties shall bear their respective costs, including attorneys fees, except as specifically addressed below.

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**FORUM FEES**

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

4 sessions X \$750 = \$3,000

Forum fees Assessed Against: Claimant and Respondents are to split the Forum Fees, so that Claimant is to pay the NASD \$1,500 less his deposit of \$750 or a remaining amount of \$750 and, Respondents are to pay the NASD \$1,500 less their deposit of \$600 or a remaining amount of \$900.

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

By the Arbitration Panel:

Dated:

01/23/95

Sam A. Yates

Paul A. Yates, Presiding  
Public Arbitrator

Frederick Kienel  
Industry Arbitrator

Bruce Sanders, Esq.  
Public Arbitrator

Date Award Served by the NASD:

September 1, 1995

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By the Arbitration Panel:

Dated:

8/22/95

\_\_\_\_\_  
Paul A. Yates, Presiding  
Public Arbitrator

Frederick Kienel  
Frederick Kienel  
Industry Arbitrator

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Bruce Sanders, Esq.  
Public Arbitrator

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By the Arbitration Panel:

Dated:

\_\_\_\_\_  
Paul A. Yates, Presiding  
Public Arbitrator

\_\_\_\_\_  
Frederick Kienel  
Industry Arbitrator

August 31, 1995

Bruce Sanders  
Bruce Sanders, Esq.  
Public Arbitrator

Date Award Served by the NASD: September 1, 1995