

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Mark and Donna Link

95-00451

Name of Respondent

Shearson Lehman Brothers, Inc.
n/k/a Smith Barney, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 27, 1995, Claimants Mark and Donna Link, who appeared Pro Se, alleged that Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc., fraudulently changed their investment profile without their knowledge or consent. Claimants further alleged that on February 21, 1991, they opened an investment account with Respondent to invest their retirement funds and selected a conservative profile which offered maximum preservation of capital. Claimants contended that in May, 1991, pursuant to Respondent's recommendation, they purchased Advanced Logic and were not informed over the next few months of its decline in value. Claimants further contended that during February, 1992, Respondent advised them to sell Advanced Logic and purchase He-Ro Group which was sold at a loss during December, 1992. Claimants alleged that they subsequently discovered a profile sheet dated November, 1992, which showed their profile as speculative, contrary to their assertion that they desired conservative investments. As a result of the above, Claimants alleged that they suffered a loss for which Respondent should be liable.

Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc., through its representative and in-house counsel, Ann Parry, Esq., New York, NY, maintained that on the new account applications, James Link, the Claimants' account executive, described Claimants' investment objectives as including "Appreciation with Risk", "Income with Safety" and "Income with Risk". Respondent further maintained that during the time in which Claimants maintained their accounts with Respondent, Respondent confirmed Claimants' investment objectives with the Claimants on at least two separate occasions. Respondent contended that Claimants admit receiving monthly account statements and trade confirmations, admit that they were at all times

aware of the status of their accounts, and admit authorizing each and every transaction in their accounts. Respondent further contended that it recommended investments that were completely consistent with Claimants' stated investment objectives and that all such investments were fully authorized and accordingly, it should not be held liable for the Claimants' loss.

RELIEF REQUESTED

Claimants Mark and Donna Link, requested \$8,298.44 in actual damages.

Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc., requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Diana G. Davis, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on August 16, 1994 and not by Respondent as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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. Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc., is liable and shall pay to the Claimants Mark and Donna Link, \$3,500.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Mark and Donna Link, shall be retained by the NASD, Inc. Respondent Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc., is liable and shall pay to the Claimants Mark and Donna Link, \$150.00 as reimbursement of the filing fee.

Affirmation

STATE OF CALIFORNIA

SS: 482-38-8984

COUNTY OF ORANGE

I, DIANA G. DAVIS, 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.

A handwritten signature in cursive script, reading "Diana G. Davis", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: August 31, 1995