

**AWARD****NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Marc J. Rosenberg

Arbitration  
No. 95-01166

**Name of Respondent(s)**

Lehman Brothers Inc.

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**REPRESENTATION**

For Claimant: Anthony P. David, Esq., San Francisco, California and  
Jeffrey L. Liddle, Esq., Liddle & Robinson, L.L.P., New York, New  
York

For Respondent: Thomas E. Hommel, Esq., Lehman Brothers Inc., New  
York, New York

**CASE INFORMATION**

Statement of Claim filed: March 7, 1995

Answer to Counterclaims filed: October 10, 1995

Claimant's Submission Agreement signed: March 6, 1995

Amended Answer filed by all Respondents: July 21, 1995

Respondents' Submission Agreements signed as follows:

Lehman Brothers Inc.: June 19, 1995

Richard S. Fuld, Jr: August 19, 1996

Scott Finlay: August 17 (year not indicated)

Dominic Scianandre: September 15, 1995

Steven Spiegel: August 22, 1995

Dennis Mooradian: January 5, 1996

**HEARING INFORMATION****Pre-Hearing Conference Date(s)/Session(s):**

July 12, 1996 (one session)  
August 9, 1996 (one session)  
August 15, 1996 (one session)  
August 27, 1996 (one session)  
August 14, 1997 (one session)

**Hearing Date(s)/Session(s):**

August 19, 1996 (three sessions)  
August 20, 1996 (three sessions)  
August 21, 1996 (three sessions)  
August 22, 1996 (two sessions)  
April 28, 1997 (two sessions)  
April 29, 1997 (three sessions)  
April 30, 1997 (three sessions)  
May 1, 1997 (three sessions)  
May 2, 1997 (two sessions)  
March 30, 1998 (three sessions)  
March 31, 1998 (three sessions)  
April 1, 1998 (two sessions)  
April 2, 1998 (one session)  
April 3, 1998 (one session)

**Hearing Location:**

San Francisco, California

**CASE SUMMARY**

Claimant alleged that the claim against Lehman Brothers Inc. (Lehman Brothers) is based upon wrongful termination, promissory fraud, negligent misrepresentation, intentional interference with an advantageous economic relationship, breach of contract to pay continuing commissions, failure to pay earned commissions prior to the termination, and violations of the NASD Rules of Fair Practice. Claimant further alleged that the claims against the individual respondents are based upon their causing, aiding, abetting, directing, failing to supervise resulting in and/or facilitating the wrongdoing of Lehman Brothers and their individual violations of the NASD Rules of Fair Practice.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim, and denied that they are liable to Claimant in any manner whatsoever. Respondents alleged that Mr. Rosenberg's claims can essentially be reduced to two central propositions: first, that Lehman Brothers breached a contract pursuant to which Claimant was allegedly entitled to compensation for certain Prime Broker accounts which he introduced to the firm; and second, that Lehman Brothers constructively discharged Mr. Rosenberg by (a) breaching the aforesaid contract and (b) suspending his client referral business pending a due diligence investigation of the money managers to whom Mr. Rosenberg referred firm clients.

Respondents further alleged that Mr. Rosenberg never had any contract with Lehman Brothers relating to the terms or duration of his employment, or guaranteeing him any amount of compensation. Respondents further alleged that Mr. Rosenberg was paid all amounts due to him, and more, for his activities as an employee of the firm. Respondents further alleged that Lehman Brothers' decision to require due diligence investigations of the money managers to whom Mr. Rosenberg was directing clients of the firm was certainly advisable given the firm's potential legal exposure to clients based upon such referrals; and alleged that Mr. Rosenberg resigned from Lehman Brothers because the focus of the business being conducted by Lehman Brothers after the sale of its retail brokerage network to Smith Barney Harris Upham & Co. was not consistent with the type of business he did. Respondents also asserted affirmative defenses.

In its Counterclaim, Lehman Brothers alleged that Mr. Rosenberg has failed and refused to return to Lehman Brothers \$22,500.00 due and owing from him to Lehman Brothers pursuant to the terms of the parties' agreement reflected in a March 31, 1993 memorandum. Lehman Brothers further alleged that Mr. Rosenberg's acceptance and negotiation of a check in the amount of \$26,162.00 constituted an implicit ratification of the terms upon which it was offered, and his subsequent initiation of this arbitration proceeding constitutes a violation of those terms, and that consequently, Lehman Brothers is entitled to assert the rights which it specifically reserved, and claims for the return of the \$26,162.00 paid to Mr. Rosenberg in August of 1994.

Mr. Rosenberg denied any liability with respect to the counterclaims filed by Lehman Brothers.

#### **RELIEF REQUESTED**

Claimant requested declaratory relief and an accounting, along with tort, contract and statutory damages, with accrued interest, in an amount according to proof, but not less than the sum of \$2 million, punitive and exemplary damages in the sum of \$5 million and attorney's fees.

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

At the outset of the evidentiary hearing, the panel of arbitrators heard and considered the positions of the parties relative to Respondents' Motion to Dismiss Richard S. Fuld, Jr. The panel granted the Motion without prejudice.

On or about April 18, 1997, the panel of arbitrators reviewed and considered the positions of the parties relative to Claimant's Motion to Amend Statement of Claim. The panel denied the Motion.

During the last week of hearing, the panel was advised and noted the parties' consent to dismiss the individual Respondents named in this matter.

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with NASD Regulation, Inc. (NASDR).

#### 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. All claims by Claimant, including the claims for punitive and exemplary damages, are dismissed.
2. All claims with respect to Respondent's Counterclaim are dismissed.
3. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall retain the \$1,500.00 hearing session deposit previously deposited by the Claimant and shall retain the \$600.00 hearing session deposit previously deposited by Lehman Brothers Inc. Forum fees shall be split between Claimant and Lehman Brothers Inc. and are calculated as follows:

Five pre-hearing sessions @ \$300.00/session	=	\$ 1,500.00
Thirty-Four hearing sessions @ \$1,500.00/session	=	<u>\$51,000.00</u>
Total fees assessed	=	\$52,500.00
Claimant's share (50%)	=	\$26,250.00
Credit for hearing deposit	=	\$ 1,500.00
Balance due	=	\$24,750.00
Lehman Brothers Inc.'s share (50%)	=	\$26,250.00
Credit for hearing deposit	=	\$ 600.00
Balance due	=	\$25,650.00

The panel waived the postponement fee with respect to the postponement of the October 21-25, 1996 hearing dates and also waived the postponement fee with respect to the postponement of the July 14-18, 1997 hearing dates.

Fees are payable to NASD Regulation, Inc.

**OTHER FEES**

Pursuant to Rule 10333 of the NASDR Code of Arbitration Procedure, Respondent Lehman Brothers Inc. has paid to NASDR the \$500.00 member surcharge previously invoiced.

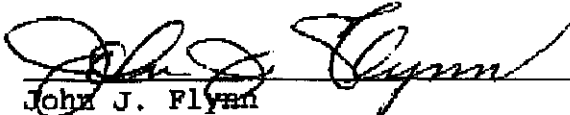
**ARBITRATORS**

Name ..... Public / Industry

Bette J. Roth, Esq.  
John J. Flynn  
Donald S. Duerson

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
John J. Flynn

\_\_\_\_\_  
Donald S. Duerson

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
Bette J. Roth, Esq.

Date of Decision: 6/16/98

Date Served: 06/30/98

The panel waived the postponement fee with respect to the postponement of the October 21-25, 1996 hearing dates and also waived the postponement fee with respect to the postponement of the July 14-18, 1997 hearing dates.

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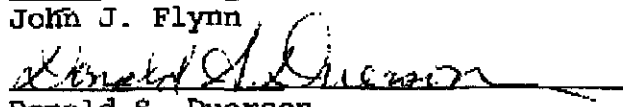
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