

N.A.S.D. AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant(s)

Joan Marlow

NASD Arbitration

No. 95-03692

Name of Respondent(s)Eric M. Hersh
Shearson Lehman Brothers, Inc.**REPRESENTATION**

For Claimant: Kevin J. Shannon, Esq., San Francisco, California

For Respondents: Alejandro Schwed, Esq., Smith Barney Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: July 26, 1995

Claimant's Submission Agreement signed: July 20, 1995

Joint Statement of Answer filed by Respondents: September 14, 1995

Respondent Eric M. Hersh's Submission Agreement signed: August 8, 1995

Respondent Shearson Lehman Brothers, Inc. did not file a Submission Agreement. However, Shearson Lehman Brothers, Inc. is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

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HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

February 26, 1996 (one session)

Hearing Date(s)/Session(s): April 10, 1996 (two sessions)

April 11, 1996 (three sessions)

Hearing Location:

San Francisco, California

CASE SUMMARY

Claimant alleged that she is an unsophisticated investor who established various accounts with Shearson Lehman Brothers, Inc. (Shearson) through Eric M. Hersh (Hersh), a Shearson financial consultant. Claimant further alleged that pursuant to Hersh's recommendations, commencing in August of 1992, Claimant established various Shearson accounts with securities distributed from three family trusts including common stock and treasury notes. Claimant further alleged that Respondents wrongfully failed to advise Claimant or otherwise take account of Claimant's low tax basis in various securities distributed by the family trusts before executing sales of common stock from the trusts thereby causing Claimant to wrongfully suffer materially adverse tax consequences. Claimant further alleged the following causes of action in connection with her investments: 1) Unsuitability; 2) Negligence and Professional Malpractice; 3) Breach of Contract; 4) Breach of Fiduciary Duty; and 5) Fraud.

Respondents denied any liability to Claimant. Respondents alleged that Claimant received an inheritance consisting of various stocks and bonds; that the stocks were not well diversified, and could not provide Claimant with the income stream she was looking for; and that Respondent Hersh suggested dividing the inheritance between various mutual funds and a managed account. Respondents further alleged that in order to achieve Claimant's goals, the stock positions were sold and replaced with a diversified portfolio of growth and income vehicles; and that significantly, Claimant has not expressed any complaints with the investments that replaced her inherited stocks. Respondents further alleged that Claimant's account was profitable and that Claimant's complaint revolves around a capital gains tax she had to pay as a result of the liquidation of the original stock. Respondents further alleged

that neither Hersh or Shearson never provided Claimant with tax advice, and were not in a position to do so without more information than what is provided by an account holder; that Claimant had an accountant that gave her tax advice prior to the sale; and that if Claimant's accountant misled Claimant, it is against that person that Claimant should proceed. Respondents further alleged that they never pretended to provide tax advice to Claimant, and were not obligated to do so. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages as follows:

1. Money damages for all out of pocket losses as compensatory damages for federal and California income taxes on \$94,052.00 of capital gains in 1992 and \$3,964.00 of capital gains in 1993, all commissions and fees paid to Hersh and Shearson, and Claimant's lost investment opportunity on the aforementioned common stock if the 1992 trust securities were never sold;
2. Or, in the alternative, Rescission with respect to all the challenged wrongful sales and investments;
3. Money damages for emotional distress; mental aggravation and anxiety;
4. Punitive damages;
5. Interest at 10%;
6. Reasonable attorneys fees and costs; and
7. Such other relief as the arbitration panel feels is appropriate.

Respondents requested dismissal of Claimant's claims and requested costs.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the panel of arbitrators was advised that the NASD does not maintain jurisdiction with respect to American Express Company as American Express Company is not a member of the NASD and did not voluntarily submit to NASD jurisdiction.

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 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. All claims by Claimant, including the claim for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$500.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against Shearson Lehman Brothers, Inc., solely, in the amount of \$2,800.00, calculated as follows: One pre-hearing session times \$300.00 plus five hearing sessions times \$500.00.

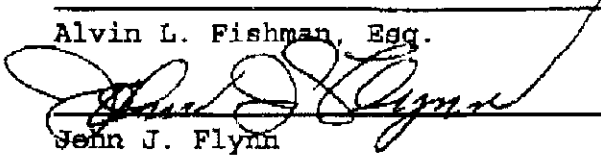
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Alvin L. Fishman, Esq.	Public Arbitrator
John J. Flynn	Public Arbitrator
Terrence W. Dorsey	Industry Arbitrator

Concurring Arbitrators' Signatures

Alvin L. Fishman, Esq.



John J. Flynn

Terrence W. Dorsey

Date of Decision: _____

Concurring Arbitrators' Signatures

Alvin L. Fishman, Esq.

John J. Flynn



Terrence W. Darsey

Date of Decision: 5/2/98

Concurring Arbitrators' Signatures



Alvin L. Fishman, Esq.

John J. Flynn

Terrence W. Dorsey

Date of Decision: 5-2-96