

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimant

Carole B. Potar

95-05608

Name of Respondent

Greenway Capital Corporation  
John LaBeck

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**REPRESENTATION**

For Claimant Carole B. Potar ("claimant") appeared Henry H. Korn, Esq. of Kensington & Ressler, P.C. located in New York, NY.

For Respondent Greenway Capital Corp. ("Greenway") appeared Ruthann Niosi, Esq. located in New York, NY.

Respondent John LaBeck appeared Pro Se.

**CASE INFORMATION**

The Statement of Claim was filed on November 3, 1995. Claimant's Submission Agreement was signed on November 2, 1995.

A Statement of Answer was filed by Greenway on February 20, 1996. Respondent Greenway's Submission Agreement was signed on March 27, 1996.

Respondent LaBeck failed to file a Statement of Answer and a properly executed Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	December 3, 1996	1 Session
	January 6, 1997	2 Sessions

The hearings were held at the Club Quarters located in New York, NY.

**CASE SUMMARY**

Claimant inherited \$180,000 from her mother who had an account with Prudential Bache and transferred that amount to her own account with Prudential. Claimant stated that her broker at Prudential oversaw her account which made purchases usually in small amounts, 20 to 100 shares, and usually in "blue chip"

securities. LaBeck was allegedly recommended to claimant by a friend who knew she wanted to move her account at Prudential from Florida to New York.

Claimant supposedly told LaBeck the funds were for her retirement and that she needed an IRA opened for 1993 that would be funded by dividends. Claimant further claimed to have told LaBeck that the dividends and proceeds had paid for her son's college education and that she expected them to pay for his graduate education. LaBeck allegedly told claimant an IRA would be opened but it never was.

Claimant contended that the only document she received from Greenway during 1993 was a statement which reflected the transfer from Prudential. LaBeck, in 1993, undertook a series of transactions in highly speculative, inappropriate and unsuitable securities for claimant's objectives which claimant further contended she had no knowledge.

In March and June of 1993, LaBeck purchased 8500 shares of Semicon Tools for a total of \$78,000.00 which had dropped to \$11,688.00 by December 1993. Claimant argued that since she never received account statements she was prevented from knowing how Semicon was performing.

Claimant further argued that her account was transferred to Island Securities Inc., where LaBeck had gone, and Semicon was eventually liquidated in May 1995 for \$3,123. LaBeck purchased Emons Holding in March 1993 and it was sold in July 1993 for a loss of \$507. Also in May 1993, LaBeck purchased Reshona International Investment Group and it was sold in February 1994 for a loss of \$10,798. Supposedly LaBeck sold claimant's "blue chip" stocks in order to pay for these securities. Claimant contended all of these transactions were made without her consent, knowledge or approval.

Claimant's account was transferred to Island Securities in late 1993. She claimed her signature on account opening agreements, margin agreements and a discretionary trading form had been forged.

Claimant claimed Greenway was liable on the theory of respondeat superior for LaBeck's actions, lack of supervision, negligence in failing to oversee LaBeck's activities and failure to handle a customer's account with due care and diligence.

Respondent Greenway specifically denied all allegations in the Statement of Claim and made the following affirmative defenses: failure to state a cause of action, market losses do not entitle recovery, claimant failed to use due diligence, claimant proximately caused her losses, LaBeck's acts, as a matter of law, cannot be imputed to Greenway, Greenway could not control claimant's losses and Greenway did not have knowledge of the acts complained of by claimant.

Respondent LaBeck failed to file a Statement of Answer.

#### **RELIEF REQUESTED**

Claimant requested \$125,000 plus interest and punitive damages of \$450,000.

Respondent Greenway requested the Statement of Claim be dismissed in its entirety.

### **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 originals remain on file with the NASD.

The panel denied claimant's motion to amend the Statement of Claim pursuant to Rule 10328(b) (formerly Section 39 (b)) of the Code of Arbitration Procedure.

Claimant settled her claim with Respondent Greenway and notified the NASD Regulation Inc. by letter dated January 17, 1997.

The arbitrators made the following rulings concerning respondent John LaBeck who failed to submit a Submission Agreement and did not appear at the second hearing session conducted in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over the entire controversy.
2. The panel found that John LaBeck was an associated person of a member of the NASD at the time the controversy arose and therefore, the panel found personal jurisdiction over John LaBeck pursuant to Rule 10301 of the Code.
3. In view of (1) and (2) above, the panel found that John LaBeck was required to file with the NASD a properly executed Submission Agreement and Statement of Answer pursuant to Rule 10314(b) of the Code.
4. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that the NASD Regulation, Inc. provided John LaBeck with due notice of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without respondent John LaBeck, whose absence was unexcused.

### **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. Respondent LaBeck be and hereby is liable and shall pay to Claimant Potar the sum of \$50,000 in compensatory damages plus simple interest at 9% per annum from May 24, 1994 until full payment is made.
2. Respondent LaBeck be and hereby is liable and shall pay to Claimant Potar the sum of \$50,000 in punitive damages pursuant to R.C. Layne Construction, Inc. v. Stratton Oakmont, Inc., et al., (New York Law Journal, December 30, 1996, p.21 c.3).
3. All other claims are hereby denied.

**FORUM FEES**

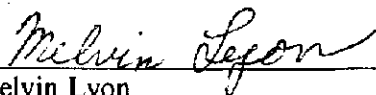
Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation will retain the \$250.00 non-refundable filing fee submitted by claimant and have assessed the following forum fees:

3 Hearing Session x \$1,000.00	= \$3,000.00
less claimant's hearing session deposit	= \$1,000.00
Total outstanding	= \$2,000.00

The arbitrators have determined to assess the entire cost of arbitration against respondent John LaBeck. Therefore Respondent LaBeck be and hereby is liable to and shall pay to NASD Regulation the sum of \$2,000.00 which represents the total outstanding forum fees. Respondent LaBeck be and hereby is liable and shall pay to claimant the sum of \$1,000.00 which represents the hearing session deposit previously deposited by claimant.

Fees are payable to the NASD Regulation, Inc.

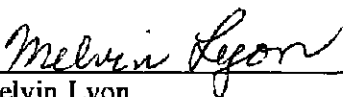
ARBITRATORS' SIGNATURES

  
\_\_\_\_\_  
Melvin Lyon  
Public Chairman

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Bennett Feigenbaum, Esq.  
Public Panelist

\_\_\_\_\_  
James E. Howard  
Industry Panelist

I, Melvin Lyon, do hereby affirm, pursuant to Article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
Melvin Lyon  
Public Chairman

I, Bennett Feigenbaum, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Bennett Feigenbaum, Esq.  
Public Panelist

I, James E. Howard, do hereby affirm, pursuant to Article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

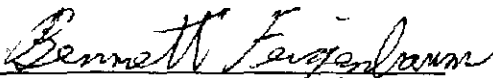
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James E. Howard  
Industry Panelist

Date of Decision: February 25, 1997

ARBITRATORS' SIGNATURES

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Melvin Lyon  
Public Chairman

  
Bennett Feigenbaum, Esq.  
Public Panelist

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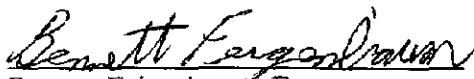
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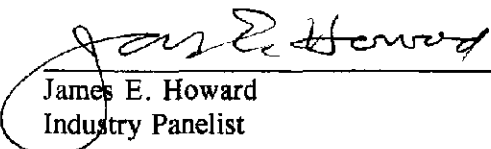
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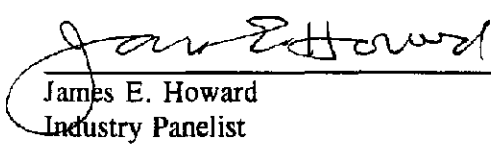
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James E. Howard  
Industry Panelist

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