

NASD REGULATION AWARD

**NASD REGULATION, INC.**

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In the Matter of the Arbitration Between

Name of Claimant

Marian Mancusi

95-05672

Name of Respondents

Smith Barney Shearson, Inc.  
Stephen A. Renaud

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**REPRESENTATION**

For Claimant appeared Tedd Belcher, Esq. a sole practioner located in New York, New York.

For Respondents appeared Nicole L. Felton, Esq. of Smith Barney, Inc. located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: December 4, 1995

Claimant's Submission Agreement signed on: April 6, 1995

Joint Statement of Answer filed by Respondents on: January 26, 1996

Respondent, Smith Barney Shearson Inc.'s Submission Agreement signed on: January 25, 1996

Respondent, Stephen Renaud's Submission Agreement signed on: January 26, 1996

**HEARING INFORMATION**

Hearing Date/Sessions:	October 31, 1996	2 Sessions
	November 1, 1996	2 Sessions

Hearing Location: NASD Regulation Offices  
33 Whitehall Street  
New York, New York

## CASE SUMMARY

Claimant alleged that Respondent, Stephen Renaud, purchased shares of ICOS and Cytogen without her prior approval thereby breaching the fiduciary duty Renaud owed to her. Claimant alleged that Renaud lacked the proper authorization to transact business in Claimant's account without approval.

Claimant alleged that on or about December 3, 1992, Renaud called her to discuss the results of recent sales. Claimant alleged that during the conversation she reiterated her investment objectives of having a diversified portfolio so that one stock would not have a significant impact on the value of the portfolio and that she was not looking to "get rich quick." Claimant alleged that at no time during the conversation did Mr. Renaud indicate that he was seeking Claimant's approval to purchase specific stocks with the proceeds Claimant had received.

Claimant alleged that Renaud purchased 3000 shares of ICOS at \$10.1875 per share for a total of \$30,566.35 and purchased 1000 shares of Cytogen at \$23.6875 per share for a total of \$23,691.35. Claimant alleged that she never authorized the purchase of these stocks nor did Renaud seek her authorization to purchase them..

Claimant alleged that in March while reviewing her monthly statement she became aware of the transactions in Cytogen and ICOS. Claimant alleged that when she confronted Renaud about the purchase Renaud stated that the stocks were recommended by Shearson and that they remained a "buy."

Finally, Claimant reiterated that she never authorized Renaud to purchase the shares of ICOS or Cytogen nor did Renaud seek Claimant's prior approval for the purchases. Claimant also alleged that the purchases of such large quantities of one stock for her portfolio was contrary to her stated investment objectives.

Respondents denied the specific allegations made in the Statement of Claim. Respondents maintained that the account that is the subject of this dispute was one of six accounts that Claimant had with Renaud and that for more than two years, only these two trades are the subject of this dispute.

Respondents maintained that the New Account Application for the subject account reflected that the Claimant had a net worth of \$500,000, was the president of a family business, and the listed investment objective was "Income with Risk." Respondents also maintained that Claimant signed a Client Agreement that provides that Smith Barney's monthly account statement and trade confirmations "shall be conclusive" unless Claimant objects within the requisite days from receipt.

Respondents maintained that Renaud spent a considerable amount of time on the phone with the Claimant and that among other things, Mr. Renaud discussed with the Claimant her investment objectives, the progress of her accounts, and ideas Claimant or Renaud had about potential investments. Respondents maintained Renaud acted in furtherance of those specific conversations and at no time did Renaud undertake trades without the express authorization of Claimant.

Respondent maintained that in December 1992, Claimant and Renaud had discussions which involved Claimant's investment objectives and what investments would be appropriate in light of the declining interest rates at the time. Respondent further maintained that Claimant stated that she

wanted to diversify her portfolio and to purchase stocks with more growth potential rather than high yielding securities. Respondents maintained that Renaud recommended stock in ICOS and Cytogen, and as a result of these conversations Claimant directed Renaud to purchase both the stocks.

Respondents maintained that after the purchases, Claimant and Renaud had frequent phone conversations in which they discussed the investments in ICOS and Cytogen. Respondents maintained that the two also discussed lessening the positions in the two stock when the biotech market began to decline; however, decided against it. Respondents maintained that at no time during these conversations did Claimant state that the purchase of ICOS and Cytogen was unauthorized.

Respondents maintained that the Claimant was sent confirmations of the trades and monthly statements which reported all the trading activities in her accounts. Respondents maintained that at no time prior to her July 1994 complaint letter did Claimant notify the Respondents that the trades in her account were unauthorized.

Respondents maintained that each trade was specifically approved by Claimant and that after each trade was made the Respondents sent to Claimant confirmations of the trades and monthly statements that reflected the investments. Respondents maintained that Claimant is seeking to have the Respondents reimburse her for losses occurred in suitable securities that did not perform as Claimant had wished.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$49,520.00.

Respondents requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs and reasonable attorneys' fees, and that this matter be expunged from Mr. Renaud's record.

### **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.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant, Marian Mancusi, are hereby denied in their entirety;
2. All parties are to bear their own costs; including attorneys fees; and,
3. All other requests for relief are denied.

## FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

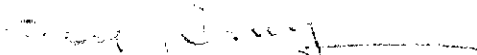
Total Forum Fees:    \$2,000.00    (4 Sessions x \$500.00)

Claimant is assessed the sum of \$1,000.00 representing one-half of the total forum fees due less \$500.00 previously paid, leaving \$500.00 due. Claimant is liable and shall pay to NASD Regulation, Inc. the sum of \$500.00.

Respondents are assessed jointly and severally the sum of \$1,000.00 representing one-half of the total forum fees due. Respondents are jointly and severally is liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00.

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

ARBITRATORS' SIGNATURES

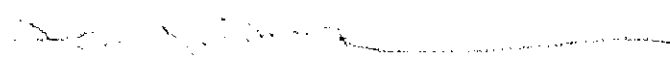
  
\_\_\_\_\_  
Neil J. Carey  
Public Chairperson

\_\_\_\_\_  
Ellen S. Hexter  
Public Arbitrator

\_\_\_\_\_  
Sheldon Lasher  
Industry Arbitrator

Date of Decision: March 18, 1997

I, **Neil J. Carey**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

  
\_\_\_\_\_  
Neil J. Carey

I, **Ellen S. Hexter**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Ellen S. Hexter

I, **Sheldon Lasher**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Sheldon Lasher

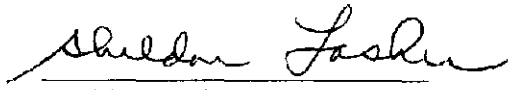
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Public Chairperson

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Ellen S. Hexter  
Public Arbitrator



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Sheldon Lasher  
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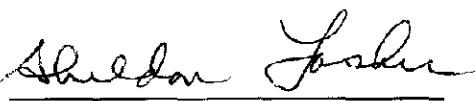
Neil J. Carey

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Ellen S. Hexter

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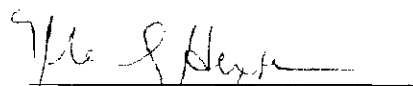
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Sheldon Lasher

**ARBITRATORS' SIGNATURES**

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Public Chairperson



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Ellen S. Hexter  
Public Arbitrator

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Sheldon Lasher  
Industry Arbitrator

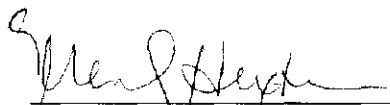
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Sheldon Lasher