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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Precision Associates, Inc.

and

96-02782

Name of Respondent

John G. Kinnard and Company, Inc.
Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

Precision Associates, Inc. ("**Claimant**") was represented by Mark J. Briol, Esq., Briol & Associates, Minneapolis, Minnesota.

John G. Kinnard and Company, Inc. ("**Respondent Kinnard**") was represented by Ted Meikle, Esq., John G. Kinnard and Company, Inc., Minneapolis, Minnesota.

Lehman Brothers, Inc. ("**Respondent Lehman**") was represented by Christopher T. Shaheen, Esq., Dorsey & Whitney, LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about June 28, 1996. Submission Agreement of Claimant Precision Associates, Inc. was signed on May 24, 1996 by Arnold E. Kadue.

Statement of Answer and Cross claim was filed by Respondent John G. Kinnard and Company, Inc. on or about August 21, 1996. Submission Agreement of Respondent John G. Kinnard and Company, Inc. was signed on August 21, 1996 by Gerald M. Gifford.

Statement of Answer was filed by Respondent Lehman Brothers, Inc. on or about September 20, 1996. Submission Agreement of Respondent Lehman Brothers, Inc. was signed on October 28, 1996 by Steven P. Vincent.

HEARING INFORMATION

The hearing was held on Tuesday, September 23, 1997 in Minneapolis, Minnesota for two (2) sessions.

CASE SUMMARY

Claimant alleged that Lehman failed to properly transfer shares of Home Holdings, Inc. stock to Respondent Kinnard in a timely manner. Respondent Lehman's failure to do so resulted in Respondent Kinnard executing a sale order for 1,500 shares without the shares being in Claimant's account. As a result of the sale by Kinnard, Claimant was required to purchase 1,500 shares to cover its' position on the sale. The 1,500 shares were later transferred to Claimants account at Respondent Kinnard worthless.

In its' Answer and Cross Claim, Respondent Kinnard denied the allegations of wrongdoing set forth in the Statement of Claim. Respondent Kinnard specifically stated that it did nothing wrong in its handling of the Claimant's account. It was stated that the losses in Claimant's account were the result of Lehman Brothers failure to timely transfer the shares of Home Holdings, Inc. After the sale order had been executed, Claimant was left with a short position and was forced to cover when the "lender" of the stock wanted to participate in the tender offer for the stock.

Respondent Lehman Brothers denied the allegations of wrongdoing set forth in the Statement of Claim. Specifically, Respondent Lehman stated that the shares of Home Holdings, Inc. were the subject of a recapitalization program, whereby Home Holdings, Inc. offered to purchase any and all outstanding shares of class A common stock at \$10 per shares. During the time period of the tender offer, Claimant instructed Lehman to transfer the account to Respondent Kinnard. The transfer was completed for all securities in the Claimant's account except for the shares of Home Holdings, Inc. because they were the subject of a tender offer. Respondent Lehman stated that Claimant failed to notify it of its' intentions regarding the tender offer in a timely manner.

RELIEF REQUESTED

Claimant requested an award in an amount in excess of \$15,000, costs and reasonable attorneys' fees incurred in this matter.

Respondent John G. Kinnard and Company, Inc. requested an award denying the claim in its entirety as it relates to Kinnard and under the cross-claim, awarding Kinnard complete indemnity from Lehman Brothers for all amounts Kinnard may be ordered to pay to the Claimant.

Respondent Lehman Brothers, Inc. requested that the Claimant's claims be dismissed in their entirety and that it be awarded its' reasonable costs and attorneys' fees incurred in defending this action.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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 John G. Kinnard and Company, Inc. shall be and hereby is liable for and shall pay to the Claimant Precision Associates, Inc. the sum of \$11,326.80 (**eleven thousand three hundred twenty six dollars and eighty cents**) which sum includes an award of interest and reimbursement of filing fees.
2. Respondent Lehman Brothers, Inc. shall be and hereby is liable for and shall pay to the Claimant Precision Associates, Inc. the sum of \$7,551.20 (**seven thousand five hundred fifty one dollars and twenty cents**) which sum includes an award of interest and reimbursement of filing fees.
3. Upon receipt of the sums set forth above, Claimant shall tender to Respondents the 1,500 shares of stock as follows 60% to Respondent John G. Kinnard and Company, Inc. and 40% to Respondent Lehman Brothers, Inc.
4. The cross claim asserted in this matter shall be and hereby is denied in its entirety.
5. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and

shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant Precision Associates, Inc.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees \$240 and **refund** the balance of the \$600 hearing session deposit previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent John G. Kinnard and Company, Inc. Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously paid by Respondent John G. Kinnard and Company, Inc.

Respondent Lehman Brothers, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$160 as the balance due for forum fees. Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Lehman Brothers, Inc. **Fees are payable to the NASD Regulation, Inc.**

Office of Dispute Resolution.

Dated:

/s/ David R. Bergerson, Esq.

David R. Bergerson, Esq.
Public Arbitrator, Presiding Chair

October 2, 1997

/s/ John P. Mazzitelli, J.D.

John P. Mazzitelli, J.D.
Public Arbitrator

October 1, 1997

/s/ Daniel E. Murphy

Daniel E. Murphy
Industry Arbitrator

October 2, 1997