

## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Richard W. Bamerick Trust

and

96-05596

Name of Respondent

Shearson Lehman Brothers, Inc.  
D.E. Frey & Co., Inc.  
James F. Glaza

Name of Third Party Respondent

Richard W. Bamerick

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## REPRESENTATION OF PARTIES

Richard W. Bamerick Trust ("Claimant") and Richard Bamerick, individually, were represented by Daniel T. Moyle, Esq., Wheat Ridge, Colorado.

Shearson Lehman Brothers, Inc. ("Respondent Shearson") and James F. Glaza ("Respondent Glaza") were represented by John S. Lutz, Esq. and Stephanie E. Dunn, Esq., LeBocuf, Lamb, Greene & MacRae, L.L.P., Denver, Colorado. James F. Glaza was represented with respect to claims related to five investments made by the Bamericks through Shearson from January 1989 through April 1989, and not with respect to any other claims in this arbitration.

D.E. Frey & Co., Inc. ("Respondent D.E. Frey") and James F. Glaza ("Respondent Glaza") were represented by Mark Appleton, Esq., D.E. Frey & Co., Inc., Denver, Colorado.

## CASE INFORMATION

The Statement of Claim was filed on or about December 17, 1996. Amended Statement of Claim was filed on or about April 18, 1997. Answer of Richard Bamerick to Third Party Claim was filed on or about April 14, 1997. Submission Agreement of Claimant Richard W. Bamerick Trust was signed on December 12, 1996 by Richard Bamerick as Trustee and Marcelle E. Bamerick as Successor Trustee.

Answer to Amended Statement of Claim was filed by Respondents Shearson Lehman Brothers, Inc. and James F. Glaza on or about June 25, 1997. Submission Agreement of Respondent Shearson Lehman Brothers, Inc. was signed on June 9, 1997 by Jeffrey L. Friedman.

Answer and Third Party Claim was filed by Respondents D.E. Frey & Co., Inc. and James F. Glaza on or about March 11, 1997. Submission Agreement of Respondent D.E. Frey & Co., Inc. was signed on February 25, 1997 by Mark Appleton. Submission Agreement of Respondent James F. Glaza was signed on February 25, 1997.

### **HEARING INFORMATION**

A pre-hearing conference was held on October 27, 1997 for one (1) session, Steven Meyrich, Esq., presiding.

The hearing was held on November 10, 1997 for two (2) sessions, November 11, 1997 for two (2) sessions, November 12, 1997 for two (2) sessions, February 10, 1998 for two (2) sessions, and February 11, 1998 for two (2) sessions in Denver, Colorado for a total of one (1) pre-hearing and ten (10) hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents are liable for losses under the following theories of relief: fraud, negligence, breach of fiduciary duty, and violations of the Colorado Securities Act. Specifically, Claimant alleged that Respondent Glaza for the purpose of inducing Claimant to take a course of conduct it would not have otherwise have taken, made misrepresentations of material fact or failed to disclose material facts concerning the limited partnership interests which the Bamericks purchased. It was also alleged that Respondent Glaza recommended that the limited partnership interests were suitable for the Claimant's investment objectives and recommended that the Claimant invest predominately in illiquid limited partnership interests.

Respondents Shearson Lehman Brothers, Inc. and James F. Glaza denied the allegations set forth in the Statement of Claim. It was specifically stated that the ultimate decision to invest was made by Mr. Bamerick as Trustee for the Trust after discussing the risks of the investments with Respondent Glaza. These Respondents stated that it was the practice of Mr. Glaza to review the sales brochure, the prospectus and other relevant documents with the Bamericks. It was further stated that each of the transactions at issue in this matter was authorized by Mr. Bamerick after he had discussed the materials with Mr. Glaza.

Respondents D.E. Frey & Co., Inc. and James F. Glaza denied the allegations set forth in the Amended Statement of Claim. Specifically, these Respondents stated that the Trust pursued investments which were consistent with its objectives, as expressed through its Trustees. It was

stated that the Trustees were actively involved in determining and directing the types of investments made by the Trust. In addition, it was stated that the Trust and/or its Trustees made other investments through these Respondents which they make no complaint about. Respondents stated that when viewed in totality, using the standard applicable to the investment objectives in question and other relevant factors, the investments made through the respondents were suitable.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$267,672. Claimant stated that the damages are \$143,149 against D.E. Frey and Glaza and \$124,523 against Shearson and Glaza. Claimant also requested an award of punitive damages in the amount of \$267,672, attorneys' fees and costs, including expert witness fees.

Respondents Shearson and Glaza requested that the claims asserted by Claimant be dismissed with prejudice.

Respondents D.E. Frey and Glaza requested that the request of Claimant be denied and that the Arbitrators enter an award in favor of the Respondents for their attorneys' fees, costs and forum fees. Respondents D.E. Frey and Glaza requested that they be awarded damages from Third Party Respondent Bamerick for any amounts that they may be held liable to the Claimant.

### **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 (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. The undersigned arbitrators find in favor of the Claimant on the claims of negligence and fraud. All other claims asserted in this matter are denied.
2. Respondents Shearson Lehman Brothers, Inc. and James F. Glaza shall be and hereby are jointly and severally liable for and shall pay to the Claimant Richard W. Bamerick Trust the sum of \$54,884 (fifty four thousand eight hundred eighty four dollars) as compensatory damages. The sum stated herein includes an award of interest.

3. Respondents D.E. Frey & Co., Inc. and James F. Glaza shall be and hereby are jointly and severally liable for and shall pay to the Claimant Richard W. Bamerick Trust the sum of \$80,653 (eighty thousand six hundred fifty three dollars) as compensatory damages. the sum stated herein includes an award of interest.
4. The Third Party 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, including but not limited to, attorneys' fees, incurred in this matter not specifically enumerated herein.

#### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$300 and were ten (10) sessions x \$750 = \$7,800 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 Code, the NASD shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Richard W. Bamerick Trust. The NASD shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by Third Party Claimant D.E. Frey & Co., Inc. Claimant Richard W. Bamerick Trust shall be and hereby is liable for and shall pay to the NASD the sum of \$1,200 as forum fees. Respondent Shearson Lehman Brothers, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$1,950 as forum fees. Respondent D.E. Frey & Co., Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$1,200 as forum fees. Respondent James F. Glaza shall be and hereby is liable for and shall pay to the NASD the sum of \$1,950 as the balance due for forum fees.

Pursuant to Rule 10333 of the Code, the NASD shall retain the non-refundable member surcharge in the amount of \$350 previously paid to the NASD by Respondent D. E. Frey & Co., Inc.

Pursuant to Rule 10333 of the Code, the NASD shall assess the non-refundable member surcharge in the amount of \$350 against Respondent Shearson Lehman Brothers, Inc.

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Pursuant to Rule 10333 of the Code, the NASD shall assess the non-refundable member surcharge in the amount of \$350 against Respondent Shearson Lehman Brothers, Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Steven Meyrich  
Steven Meyrich, Esq.  
Public Arbitrator, Presiding Chair

Dated: February 12, 1998

/s/ Richard L. Haney  
Richard L. Haney, OD  
Public Arbitrator

February 12, 1998

/s/ Roger T. Felthoven  
Roger T. Felthoven  
Industry Arbitrator

February 12, 1998