

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

**Michael Christy V. Shearson Lehman Brothers, Inc., Gruntal & Co., Inc., Richard Patterson**

Case Number: 99-3294

Hearing Site: Detroit, Michigan

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**REPRESENTATION OF PARTIES**

Claimant, Michael Christy ("Christy"), hereinafter referred to as "Claimant": Anthony V. Trogan, Esq, Weisman, Trogan, Young & Schloss, P.C., Bingham Farms, Michigan.

Respondents, Shearson Lehman Brothers, Inc. ("Lehman Brothers") and Richard Patterson ("Patterson"), hereinafter collectively referred to as "Respondents": Robert J. Mandel, Esq., Neal Gerber & Eisenberg, Chicago, Illinois.

Respondent, Gruntal and Co., L.L.C. ("Gruntal"), hereinafter referred to as "Respondent": Joseph A. Vallo, Esq., Gruntal & Co., L.L.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: July 16, 1999

Claimant signed the Uniform Submission Agreement: July 15, 1999

Statement of Answer filed by Respondents, Lehman Brothers and Patterson, on or about: October 14, 1999

Statement of Answer filed by Respondent, Gruntal, on or about: September 9, 1999

Respondent, Lehman Brothers, signed the Uniform Submission Agreement: October 13, 1999

Respondent, Patterson, signed the Uniform Submission Agreement: October 7, 1999

Respondent, Gruntal, signed the Uniform Submission Agreement: August 31, 1999

Respondents Lehman Brothers and Patterson's Motion to Dismiss filed on or about: April 14, 2000

Claimant's Response to Motion to Dismiss filed on or about: May 9, 2000

Respondents Lehman Brothers and Patterson's Reply in Support of Motion to Dismiss filed on or about: May 22, 2000

**CASE SUMMARY**

Claimant, alleged that he opened an account with Respondent Lehman Brothers, Inc., after solicitation calls from Brian Lantero, a representative of Lehman Brothers. Claimant asserted that he advised Respondents that he was a novice and conservative investor and that he would be dependent upon Respondents' advice. Claimant alleged that Respondents began their relationship with Claimant by baiting him with a promised new listing in the United States of Nestles, which Respondent represented was a conservative investment which was "sure to go up in value" once placed on the NYSE. Claimant stated that he followed Respondent's advice and purchased 500 shares of Nestle. Claimant asserted that he later was told that the transfer of Nestle to the NYSE would not be effectuated, and that Respondents then solicited the switch to Media Vision. Claimant further asserted that Respondents Lantero/Lehman Brothers began executing purchases and sales on margin without Claimant's authorization, and informing Claimant after the fact.

Claimant alleged that he was not aware that he had signed a margin agreement and had no knowledge of how margin worked. Claimant asserted that about a year after opening his Lehman Brothers account, he received notification that Lantero had left Shearson Lehman Brothers and moved to Gruntal. Claimant further asserted that Lehman Brothers appointed a new broker, Richard Patterson, to Claimant's account, while Brian Lantero worked to have Claimant's account transferred to Gruntal. Claimant alleged that Lehman Brothers refused to transfer Claimant's account and that Claimant ended up with two accounts, with Media Vision in both accounts. Claimant averred that Respondent Patterson also recommended Media Vision as a conservative, safe, low risk investment, solicited its purchase, and neglected to explain margin. Claimant further alleged that, for a time, Respondents Patterson/Lehman Brothers would not trade in Claimant's account because margin papers could not be found; then they began to sell off Claimant's account.

Claimant's claim is based upon the legal theories and principles of: breach of contract, common law fraud, conspiracy, promissory estoppel, conversation, negligence, malpractice, breach of fiduciary duty, breach of Michigan securities law, and violation of the Michigan Consumer's Protection law.

Unless specifically admitted in their Answer, Respondents Lehman Brothers and Patterson denied the allegations made in the Statement of Claim and asserted defenses including the following: Claimant's claims for conversion, negligence, breach of fiduciary duty, violation of the Michigan Uniform Securities Act and Malpractice are time-barred as a matter of law by the applicable statutes of limitations; Claimant's claims for malpractice and violation of Michigan's Consumer Protection law are not applicable in securities cases; Claimant's claims for breach of contract, conversion, conspiracy, and promissory estoppel violate NASD Rule 10314(a); Claimant does not allege and cannot prove a churning claim; there is no private cause of action by a customer against a broker for violation of the NASD or NYSE rules; if Claimant was a member of a Media Vision Class Action, he is precluded from bringing this individual action; Claimant failed to mitigate his damages.

Unless specifically admitted in its Answer, Respondent Gruntal denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a cause of action; the damages allegedly suffered by Claimant has no causal relationship with any act committed by Gruntal; the doctrines of estoppel, laches, ratification and affirmance; failure to mitigate; Gruntal and its agents did not make unsuitable recommendations with respect to the investment objectives of Claimant; assumption and acceptance of the risk of loss; the transactions complained of in the Statement of Claim were duly authorized by Claimant, who, at all times, was in sole control of the assets in the account.

#### **RELIEF REQUESTED**

Claimant requested \$51,000.00 in compensatory damages, interest at 12%, costs, actual; attorney fees as determined by the panel, exemplary and punitive damages as determined by the panel, additional damages as determined by the panel, and rescission.

Respondents Lehman Brothers and Patterson requested: dismissal, expungement of Patterson's CRD, attorneys' fees, costs, expenses, filing fees and hearing fees, together with such other and further relief as the Panel deems appropriate.

Respondent, Gruntal, requested dismissal and costs.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Concerning Respondents Lehman Brothers and Patterson's Motion to Dismiss, the Panel dismissed Claimant's claims for Malpractice and Violation of Michigan Consumer's Protection Law. In all other respects, Respondents Lehman Brothers and Patterson's Motion was denied without prejudice.

Respondents Lehman Brothers, Patterson and Gruntal made an oral Motion for Summary Judgment at arbitration. After hearing argument from all parties, said Motion was granted as to (1) Damages related to Nestle's trade; (2) Conversion; (3) Negligence; (4) Breach of Fiduciary Duty; and (5) Violation of Michigan Securities Act.

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.

### **AWARD**

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

#### **A) Finding of Fact:**

- 1.) The proofs in the matter asserted herein establish no claim whatsoever against Respondent, broker Richard Patterson.

#### **B) Ruling:**

- 1.) Respondent Shearson Lehman Brothers, Inc., is solely liable for and shall pay to Claimant Michael Christy the sum of \$12,500.00 in compensatory damages;
- 2.) Respondent Gruntal & Co., L.L.C., is solely liable for and shall pay to Claimant Michael Christy the sum of \$12,500.00 in compensatory damages;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Richard Patterson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Richard Patterson (CRD # 836409) must

obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) That any relief not specifically enumerated, including punitive and exemplary damages, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are parties.

Member surcharge	= \$1,000.00 (Lehman Brothers) / \$1,000.00 (Gruntal)
Pre-hearing process fee	= \$600.00 (Lehman Brothers) / \$600.00 (Gruntal)
Hearing process fee	= \$1,500.00 (Lehman Brothers) / \$1,500.00 (Gruntal)

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: April 20, 2000 1 session	

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: February 11, 2000 1 session	

Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date: May 31, 2000 2 sessions	

Total Forum Fees	= \$2,700.00
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The Panel has assessed \$900.00 of the forum fees to Mike Christy.

The Panel has assessed \$900.00 of the forum fees to Gruntal & Co., L.L.C.

The Panel has assessed \$900.00 of the forum fees jointly and severally to Shearson Lehman Brothers, Inc., and Richard Patterson.

### **Fee Summary**

Claimant, Michael Christy, be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 1,125.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Regulation, Inc.	= \$ 150.00

Respondent, Gruntal & Co., L.L.C., be and hereby is solely liable for:

Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 4,000.00
<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD Regulation, Inc.	= \$ 900.00

Respondent, Shearson Lehman Brothers, Inc., be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 3,100.00
Total Fees	= \$ 3,100.00
<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents, Shearson Lehman Brothers, Inc., and Richard Patterson, be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 900.00
Balance Due NASD Regulation, Inc.	= \$ 900.00

All balances are due to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

/s/ Benjamin A. Kerner, Esq.  
Benjamin A. Kerner, Esq.  
Public Arbitrator, Presiding Chair

07/05/00  
Signature Date

/s/ Robert L. Nichols, Sr.  
Robert L. Nichols, Sr.  
Public Arbitrator

07/05/00  
Signature Date

/s/ Stuart M. Egrin  
Stuart M. Egrin  
Industry Arbitrator

07/05/00  
Signature Date

07/05/00  
Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution  
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July 5, 08  
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Robert L. Nichols, Sr.  
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Signature Date

Stuart M. Egrin  
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Signature Date

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07/05/00 WED 09:41 FAX

## NASD REGULATION

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