

**MSRB**  
MUNICIPAL SECURITIES RULEMAKING BOARD

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SEP 30 1991

M.S.R.B.

In the Matter of the Arbitration between

Claimant,

AWARD

v.

SHEARSON LEHMAN BROTHERS INC. a/k/a SHEARSON  
LEHMAN HUTTON, AN AMERICAN EXPRESS COMPANY,  
and DAVID BRADLEY,

MS 90-71

Respondents.

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby state as follows:

**CASE SUMMARY**

Claimant alleges that Respondent Shearson Lehman Brothers Inc. a/k/a Shearson Lehman Hutton, an American Express Company ("Respondent Shearson"), as successor to E.F. Hutton, and Respondent David Bradley ("Respondent Bradley") recommended an unsuitable investment to Claimant in connection with the sale to Claimant on May 7, 1985, at a price of 101, of \$145,000 face amount of Mount Carbon Metropolitan District, Jefferson County, Colorado, General Obligation Bonds, Series 1985 A-2, Dated May 1, 1985, 11½ coupon, due May 1, 2005 ("the Bonds"). Claimant alleges that said investment was inappropriate for Claimant given her income needs, her age, her investment objectives, her level of risk aversion, and the concentration within her total investment portfolio which said investment represented. Claimant also alleges, among other things, that Respondents failed to advise Claimant that the Bonds were a new issue and were not rated. Claimant further alleges that Respondents failed to provide Claimant with the official statement for the Bonds and failed to disclose to Claimant pertinent risk factors disclosed therein. In addition, Claimant alleges that between August 1987 and August 1988 Claimant continuously questioned the wisdom of said investment, but was assured repeatedly by Respondent Bradley that she should hold onto the Bonds. Claimant contends that the Bonds have ceased to pay interest and have little or no market value today. Claimant maintains that the recommendation by Respondents to purchase and to hold the Bonds was unsuitable, and violated the common law as well as the rules and regulations of the National Association of Securities Dealers, Inc. and other regulatory authorities.

Respondents deny all allegations in the statement of claim and deny that they acted improperly in any way with respect to Claimant's account. Respondents argue that Respondent Bradley discussed with Claimant her investment objectives and financial resources prior to recommending the purchase of any securities for her account, and that at the time of the disputed transaction Respondent Bradley had been handling Claimant's account for approximately four years. Respondents further argue that Respondent Bradley accurately and fully described the Bonds to Claimant and told Claimant that the Bonds were not rated. In addition, Respondents contend that Claimant was sent a copy of the official statement for the Bonds with the confirmation of the transaction, as well as copies of monthly statements which reflected the market value of the Bonds. Respondents contend that said documentation advised Claimant to contact the branch manager if any of her trades were inconsistent with her investment objectives but that Claimant did not object to the disputed transaction in a timely manner. Respondents contend that Claimant is a sophisticated investor who fully understood the nature of her investment and the risks associated therein, and that she is barred from recovery by, among other things, the principles of waiver, estoppel and ratification.

#### RELIEF REQUESTED

Claimant seeks to recover \$146,450 in exchange for the Bonds, plus all commissions charged against her by Respondents on the disputed transaction, plus interest on said amounts since the trade date, the costs of this arbitration proceeding including reasonable attorneys' fees, and such further relief as the arbitrators deem appropriate including punitive damages.

Respondents contend that Claimant is not entitled to any of the relief that she seeks and request that her claim be dismissed in its entirety.

#### AWARD

On August 13, 1991, in Albuquerque, New Mexico, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on September 18, 1990 (filed with the MSRB on December 7, 1990); by Respondent Shearson on January 30, 1991; and, by Respondent Bradley on January 7, 1991. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, as well as Claimant's statement of costs and attorneys' fees submitted after the hearing, has determined, in full and final resolution of the issues submitted for determination, as follows:

1. Claimant shall deliver the Bonds to Respondents.
2. Respondents shall be jointly and severally liable and shall pay to Claimant \$146,450, plus simple interest on said amount at the rate of 11% per annum based on a 360-day year from November 1, 1989 (the date of the last interest payment on the Bonds) to the date of this award.
3. Respondents shall be jointly and severally liable to Claimant for reasonable attorneys' fees, in the amount of \$12,000, and costs, in the amount of \$3,300, for a total of \$15,300.
4. Except as set forth above, no other relief, including but not limited to punitive damages, shall be awarded.
5. Claimant's \$750 arbitration deposit shall be retained  
by the MSRB.

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Public Arbitrator

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Public Arbitrator

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Industry Arbitrator

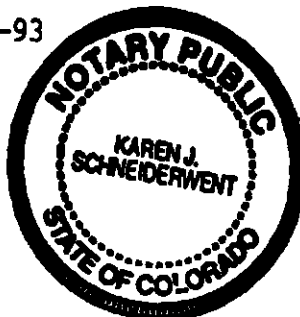
Dated: September 25, 1991

STATE OF COLORADO  
COUNTY OF ARAPAHOE

SS.:

On this 16th day of September, 1991, before me personally appeared \_\_\_\_\_ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

My commission expires: 7-11-93

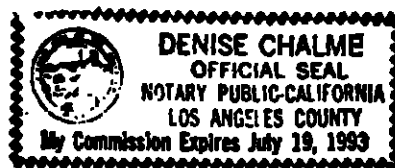


*Karen J. Schneiderwent*

STATE OF CALIFORNIA  
COUNTY OF Los Angeles

SS.:

On this 23rd day of September, 1991, before me personally appeared \_\_\_\_\_ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



*Denise Chalme*  
Denise Chalme

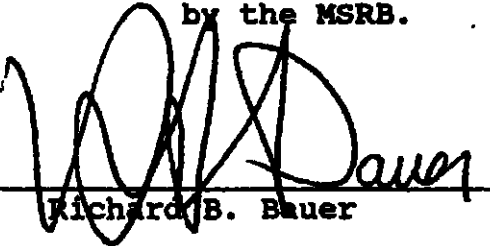
STATE OF TEXAS  
COUNTY OF DALLAS

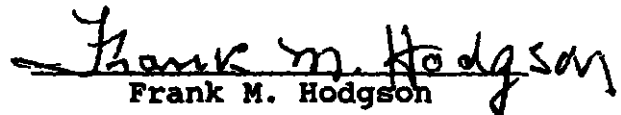
SS.:

On this 25th day of September, 1991, before me personally appeared \_\_\_\_\_, Jr. to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Jacqueline Shelton*  
Jacqueline Shelton  
Notary Public, Dallas County,  
Texas. My Commission Expires 3-31-93.

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Richard B. Bauer

  
Frank M. Hodgson

  
James H. Kerley, Jr.

Dated: September 25, 1991