NASD

Arbitration

National Association of Securities Dealers, Inc.
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January 16, 1993

Kathryn L. Krebs, Esq.
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Catalina Landing
310 Golden Shore
P.O. Box 1730
Long Beach, CA 90801-1730

Re: NASD Arbitration 91-02169 Derene L. Lewis & Interim Personnel, Inc. vs. Shearson Lehman Brothers, Inc. and Albert Franklin Dunlap

Dear Ms. Krebs:

I am in receipt of your letter, dated January 7, 1993 regarding respondents' Motion to Dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure, dated November 21, 1991, in the above matter.

First, be advised that respondents' Motion to Dismiss claimant's negligence and breach of oral contract claims, claimant's breach of written contract claim and claimant's breach of fiduciary duty and fraud claims as being time-barred by the applicable statue of limitations is substantive in nature and rests within the exclusive jurisdiction of the arbitrators to determine. In this regard Section 15 does not extend statutes of limitation which arbitrators may conclude are applicable.

As to Section 15 of the NASD Code of Arbitration Procedure the NASD National Arbitration Committee has provided me with discretion on a case by case basis in determining the occurrence or event giving rise to the act of dispute claim, or controversy from which the six (6) year eligibility time period will be calculated. In this matter, claimants have alleged that September 1989 was the date they learned of the continued misrepresentation and/or fraudulent inducement by the respondents. Therefore, I have determined the claim to be eligible under Section 15. Respondents may, in their discretion, remise this issue with the panel of arbitrators selected to hear the above matter.

Very truly yours,

Deborah Masucci
Director/Vice President of Arbitration

CC: Thomas F. Wynn, Assistant Director
John Phillips, Legal Assistant
Dereck Sorrells, Arbitration Administrator

DM:WGHLjw

EXHIBIT D-5