JOAN HUNT SMITH

Testifying before

The Subcommittee on Telecommunications & Finance

9 June 1988

OPENING REMARKS ON ARBITRATION

Mr. Chairman and Members of the Sub Committee:

Before I begin, may I request that both my oral and written statements be included in the Record.

Each of you has before you a more detailed report than the highly condensed one which I will now relate in accordance with Committee rules.

I appear before you because I have been through arbitration. This story is about three people who in 1982 suffered life-altering experiences at Shearson/American Express. I, my daughter's Trust, and a friend reaching retirement age were the customers involved. Because we each had the same broker who had recommended options as the proper investment instrument, the attorneys consolidated the three cases into one arbitration for unsuitability. This was held before the Chicago Board Options Exchange Arbitration Committee in November 1984. None of us had any prior options experience before meeting Shearson's broker.

Our combined losses were approximately $500,000. The total commissions paid to the brokerage house while incurring these losses were over $225,000, and during the last year our accounts provided over 1/3 of the broker's commission income.

Prior to the arbitration, the broker was indicted on several counts of tax fraud. He used his prolonged psychiatric care as a plea for leniency. He received a jail sentence and committed suicide five months before the arbitration.

As the hearing began at 3:30 p.m. the Chairman advised us of his preference for brevity and took away the promised third day, thus denying us rebuttal time. We were given less than ten hours to present three complex cases.

On the first day, two different in-house financial statements for my account came to light, both containing erroneous information. I had no knowledge of the existence of these statements; they do not require customer signature. Testimony revealed that my income and net worth had been almost tripled on the second statement which had been backdated to conform with the first. Statements for the other two accounts were available during the arbitration, but there was no testimony regarding them.

After the arbitration, when all of the financial statements were enlarged and subjected to close scrutiny, it was discovered that there were three statements for the Trust, all different. They had been grossly manipulated and inflated and all had been filled out within a five-month period. The statement for the fifth claimant had also been manipulated and inflated. All of these statements were signed by the same broker and were co-signed by the same Chicago manager, with the exception of my first statement which had been returned to the manager by Shearson's New York Compliance Department marked "account approved for covered calls only -- please acknowledge." Unlike my first statement, neither my second (which had been invented within ten days of the first), nor any statements for the Trust, bear any approval initials by Shearson's New York Compliance Department. Long after the arbitration we found two other cases involving manipulated financial statements, one signed by the same broker and same manager as in our three cases. The manager who co-signed these statements with the broker remains Shearson's Chicago manager to this day.

None of the three experienced arbitrators had asked any questions about the reasons for the differences in my two financial statements, or even why there were two.

Nor did they pursue any questioning about the three statements of the Trust or the statement for the third claimant, thus ignoring the serious reservation of authenticity of all the financial statements. 162 questions and challenging statements were directed by the arbitrators to our witnesses. Only 9 were directed towards Shearson's witnesses. It seemed as though the arbitrators where trying to avoid having any testimony detrimental to Shearson enter the record. This panel incredibly rendered a finding of "No Award."

Several weeks after the arbitration, we learned that Shearson's Vice President and General Counsel, Phillip Hoblin, was a former Chairman of the CBOE Arbitration Committee and had served on a seven-man conduct committee with the present Chairman of the Arbitration Committee, who was also the Chairman of our panel. This relationship certainly gives the appearance of a conflict and should have been disclosed to us before the Arbitration Committee agreed to hear our complaint.

The arbitration record is replete with other examples of arbitrator conduct protective of Shearson which include:

(1) The Chairman harassed and belittled one of our expert witnesses.

(2) He made protective interruptions of our counsel as he was bearing down on Shearson witnesses.

(3) He denied most meaningful discovery.

(4) The rules of evidence were not followed; no corroborating or direct witnesses were required.

(5) The only experienced public arbitrator did securities work.

(6) The panel again ignored evidence of apparent fraud when they denied our Motion to Vacate.

Our case did not fare any better with the SEC than it did in arbitration. Their examination was also very superficial. It is extremely important for Congress to understand the gap that exists between fact and fantasy. We have all been conditioned to believe that the SEC is the champion of investor rights and the watchdog of the securities industry for the public. The harsh reality is that no one -- repeat, no one -- is really protecting the individual investor, and he has nowhere to turn for help except to Congress. Only the most blatant, newsworthy and politically sensitive cases are prosecuted, and this does not do the job for all.

The SEC's role as amicus curiae in Shearson v. McMahon revealed a total lack of interest in investor welfare when they broke with tradition and sided with the industry. After reviewing our case for 17 months, the SEC had advised Chairman Dingell of their very limited authority over arbitration. Simultaneously, and in complete contradiction, the SEC, through the Justice Department told the Supreme Court that the SEC had full authority over arbitration rules and procedures. The SEC and Justice Department joining forces with Shearson was as persuasive as it was reprehensible. They beguiled that judicial body into a 5-4 decision which now requires that all investor complaints of violations of securities law, including fraud and RICO, be bound by an arbitration clause which is non-negotiable and unavoidable. Surely the Congress will not accept and leave unchallenged, uncensured and uncorrected the regrettable performance of this regulatory agency before the Supreme Court and its continued passive abuse of the individual

investor who must now seek relief from the same industry against whom they have brought their claims. The SEC's most recently publicized position on the pre-dispute arbitration clause represents yet another 180 degree turn, and I for one tend to question the sincerity of those who wear too many divergent hats.

In summation, our arbitration was a complete sham, and surely is not unique. You, as the lawmakers, must decide whether this system which can deny due process at will should survive. I hope Congress has the resolve to free the American investor from the abusive grip of the securities industry.

Thank you.