

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Lois M. Cook

Claimant

and

E. F. Hutton & Company, Inc. and
Thomas Woolsey

Respondents

A W A R D
87-01497

CASE SUMMARY

In a claim filed with the NASD on August 11, 1987, Claimant Lois Cook ("Cook") alleged that Respondents E.F. Hutton & Co., Inc. and Thomas Woolsey ("Hutton" and "Woolsey") breached their fiduciary duty to Cook in failing to invest her monies in safe and liquid securities. The purchases of 16 limited partnerships for Cook's account were allegedly unsuitable given her investment objectives and were also allegedly misrepresented as being liquid investments. Additionally, Hutton and Woolsey also allegedly purchased highly speculative and non-income producing stocks contrary to Cook's investment objectives and allegedly churned the account through excessive trades. Cook also alleged that Hutton failed to properly supervise and train its agent, Woolsey.

Hutton alleged that Cook was a sophisticated investor who knew and understood the risks associated with her investments. In addition, the investments were fully explained to Cook including the risks and rewards. Cook allegedly did not solely rely on Woolsey and Hutton for investment advice. Cook also allegedly did not ever state that her main investment objectives were safety of principal and liquidity. All transactions were allegedly suitable and Hutton did not breach any fiduciary duty owed to Cook. Hutton denied that any misrepresentations were made concerning any investments which were made in Cook's account or that Hutton failed to properly supervise Woolsey and denied that the account was churned. Hutton also alleged certain affirmative defenses including, but not limited to, waiver, estoppel, ratification, assumption of risk, failure to mitigate damages and that the claim was barred by applicable statutes of limitation.

Woolsey raised the same foregoing defenses expressed in Hutton's answer. Woolsey also maintained that the investments for Cook's account were suitable, denied that the account was churned, or that transactions were executed in her account without prior authority and alleged that he never represented that limited partnership investments were fully or otherwise liquid. Woolsey also alleged affirmative defenses including, but not limited to, estoppel, laches, waiver, assumption of risk and that the claims were barred by the applicable statute of limitation.

RELIEF REQUESTED

Cook represented \$1,104,000 in compensatory damages, an unspecified amount of punitive damages, costs of the proceeding and attorney's fees for a total of at least \$1,150,000.

Hutton and Woolsey asked for dismissal of the claim in its entirety.

AWARD

On Thursday, July 27, Friday, July 28, Tuesday, October 3, Wednesday, October 4, and Thursday, October 5, 1989, during a hearing lasting 9 sessions in St. Louis, Missouri, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 5, 1987 by Claimant Lois M. Cook, on November 16, 1989 by Richard Apicella, Vice President on behalf of Respondent E.F. Hutton & Co., Inc. and on October 29, 1987 by Respondent Thomas Woolsey.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Hutton and Woolsey are jointly and severally liable for and shall pay to Cook, the sum of One Hundred Eighty Two Thousand Dollars and No Cents (\$182,000.00);
2. No interest is awarded or shall be paid on the above-stated sum;
3. Cook's claim for punitive damages shall be and is hereby dismissed in its entirety;
4. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$1000.00 filing fee previously deposited with the NASD by the Claimant Lois M. Cook. Cook is assessed and shall pay to the NASD as additional forum fees the sum of \$2,500.00. Hutton and Woolsey are also assessed jointly and severally, and shall pay the NASD additional forum fees in the sum of \$3,500.00.

By the Panel

Dated: November 10, 1989

/S/ George W. Kasserman, Jr.
Presiding Chairman

Dated: November 13, 1989

/S/ Stephen Novack, Esq.

Dated: November 15, 1989

/S/ Donald A. Estell