

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Jane M. and Russlyn M. McGowen

Claimants

and

E.F. Hutton & Company, Inc. and  
Thomas C. Wilson

Respondents

A W A R D  
87-02496

CASE SUMMARY

Jane M. McGowen and Russlyn M. McGowen ("Claimants") alleged: 1) that E.F. Hutton & Company's registered representative, Thomas C. Wilson fraudulently induced the Claimants to trade GNMA's by making material misrepresentations and omissions regarding the purchase of GNMA's on margin; 2) one of the Claimants' signatures on the customer agreement was forged; 3) Thomas Wilson failed to inform the Claimants of the risks of purchasing the GNMA's on margin; 4) the purchase of the GNMA's was an unsuitable investment for the Claimants; 5) E.F. Hutton and William R. Hanlein failed to properly supervise Thomas C. Wilson and his handling of the Claimants' account; 6) Respondents acts constituted a) negligence, b) violation of Section 10(b) of the Securities and Exchange Act of 1934 and of Rule 10b-5 thereunder and violation of 15 USC 78(t), c) violation of Alabama and Mississippi Securities laws, d) common law fraud as codified under state law, and e) breach of fiduciary duty.

Respondents E.F. Hutton and Company, Inc., Thomas C. Wilson and William Hanlein denied each and every claim of the Claimant and further alleged that: 1) Claimants failed to state a claim upon which relief can be granted; 2) all transactions were ratified by the Claimants; 3) Claimants' claims are barred by the doctrines of waiver, estoppel, assumption of the risk and contributory negligence; 4) Claimants' losses were not caused by the actions of Hutton, nor did the Claimants rely on any alleged misrepresentations; 5) Respondents acted in good faith, and exercised at least that degree of care, diligence and skill which a prudent person would exercise in similar circumstances, and 6) Claimants failed to mitigate damages.

#### RELIEF REQUESTED

Claimants requested actual damages of Sixty Two Thousand Forty Eight Dollars and Nine Cents (\$62,048.09), punitive damages in an amount to be determined by the arbitrators, plus attorneys' fees and costs. Respondents requested that the claims of the Claimant be dismissed.

#### AWARD

On December 8, 1987 the Claimants submitted the claim with the NASD. On August 30-31 and November 9-10, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in the submissions to arbitration signed by Jane M. McGowen and Russlyn M. McGowen on December 3, 1987, by Lisa Labonte on behalf of Shearson Lehman Hutton, Inc. (sued herein as E.F. Hutton & Company, Inc.) on March 23, 1988 and by Thomas C. Wilson on March 24, 1988. William R. Hanlein stated on the record the morning of August 30, 1989 that he was submitting this controversy to the undersigned arbitrators for resolution and agreed to be bound by any decision issued by the panel. The hearing was held in eight sessions in New Orleans, Louisiana.

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. Shearson Lehman Hutton, Inc. and Thomas C. Wilson shall be jointly and severally liable for and pay to Jane M. McGowen and Russlyn M. McGowen the following:

a. \$47,417.66 plus interest accruing thereon at the rate of 8% per annum compounded annually commencing March 23, 1987 until paid;

b. Costs of \$4,303.43; and

c. Attorneys' fees of \$20,000.

2. All claims asserted by the Claimants against William R. Hanlein are hereby dismissed.

3. Pursuant to Section 43 of the NASD Code of Arbitration Procedure the NASD shall refund the \$750.00 fee previously filed by the Claimants and Shearson Lehman Hutton, Inc. shall pay as forum fees \$6,000 to the NASD through its staff counsel.

Arbitrators Concurring

Dated: December 13, 1989

/S/ Daniel Eugene Bivins III  
Presiding Chairman

Dated: December 12, 1989

/S/ Clayton J. Borne, Jr.

Dated: February 12, 1990

/S/ Thomas E. Robinson, Sr.