

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Kevin V. Walden

Claimant

vs.

88-00020

E.F. Hutton & Company, Inc. (now known as
Shearson Lehman Brothers, Inc.)
Theodore Crowley and Lee Weiss
Respondent

REPRESENTATION OF PARTIES

Kevin V. Walden was represented by Barry H. Hart, Esq. of Phoenix, Arizona.

Shearson Lehman Brothers, Inc., Theodore Crowley and Lee Weiss were represented by Jesse B. Simpson, Esq., Lewis and Roca of Phoenix, Arizona.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 4, 1988 and in the First Amended Statement of Claim filed with the NASD on or about October 26, 1989, Kevin V. Walden ("Claimant") alleged that Theodore Crowley ("Crowley") a registered representative employed by E.F. Hutton & Company, Inc. n/k/a Shearson Lehman Brothers, Inc. ("Hutton") made material misrepresentations to him to induce him to open an account at Hutton. Claimant further alleged that Crowley made fraudulent representations designed to induce Claimant to grant Crowley discretionary authority to trade options. Claimant also alleged that Hutton and Lee Weiss ("Weiss") failed to supervise Crowley. Claimant specifically alleged breach of contract, breach of the duty of good faith and fair dealing, negligence, fraud, intentional misrepresentation, negligent misrepresentation, racketeering, negligent supervision, breach of fiduciary duty, and fraud in the sale of securities.

In their Answer and Counterclaim filed with the NASD on or about June 10, 1988 and in their Response to the Amended Statement of Claim filed with the NASD on or about December 27, 1989, Hutton, Crowley and Weiss (collectively referred to as "Respondents") denied the allegations set forth in the First Amended Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief assumption and acceptance of the risk; and failure to mitigate.

In its Counterclaim,, Hutton alleged that Claimant's account had a debit balance.

RELIEF REQUESTED

Claimant requested an award in the approximate amount of \$80,000.00, attorneys fees and costs and prejudgment interest.

Respondents requested that the Statement of Claim and First Amended Statement of Claim be dismissed and that costs be assessed against Claimant. Respondent Hutton requested that it be awarded \$4,484.35 plus interest.

OTHER ISSUES

Max Cates was originally named as a Respondent in this matter. Claimant agreed to dismiss all claims against Max Cates with prejudice by Stipulation dated February 8, 1989.

PROCEDURAL MATTERS

On Wednesday, June 5, 1991 and Thursday, June 6, 1991 in Scottsdale, Arizona during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 9, 1988 by Claimant Kevin V. Walden on June 9, 1988 by Bari Jane Wolfe on behalf of Respondent Shearson Lehman Hutton, Inc.

Respondents Theodore Crowley and Lee Weiss did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original (s) remain on file with the NASD.

AWARD

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

1. The motion for directed verdict is granted. Therefore the first amended Statement of Claim is dismissed;
2. The counterclaim was considered to have been abandoned, since it was not asserted in the Response to the first Amended Statement of Claim;
3. Each party bears its own costs and expenses; and.

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimant. Shearson shall pay to the NASD the sum of \$2,000.00 as forum fees.

Dated:

6/6/91

s/ William M. Howard, Esq.
Presiding Chair
Public Arbitrator

6/6/91

s/ Howard S. Baldwin
Public Arbitrator

6/6/91

s/ Bruce A. Lindvig
Industry Arbitrator