

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
DR. GAYLORD LEWIS,)
) Claimant,)
) Case #88-00435
vs.) Award
)
E. F. HUTTON & COMPANY, INC. and)
J. ROBERT SORY, JR.,)
) Respondents)
)

Heard before the members of the Arbitration Panel:

Joseph L. Bernstein, Esq.
Norris L. Friedlander
Joseph M. Luby

CASE SUMMARY

This claim was filed with the NASD, Inc. on February 10, 1988. The hearing was conducted in Fort Lauderdale, Florida, with a total of three sessions. Claimant, Gaylord Lewis ("Lewis"), alleged that the Respondents, E. F. Hutton & Company, Inc. ("Hutton") and J. Robert Sory, Jr. ("Sory"), recommended and sold to Lewis two limited partnerships, Hutton Apache and CP II, that were not suitable for an 85 year old retiree with Lewis's investment objectives. Respondents contended that the two limited partnerships were consistent with Lewis's expressed investment objectives and financial condition, and that all claims are time barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimant Lewis requested rescission of the purchase of the two limited partnerships pursuant to Section 517.211, Florida Statutes for the sum of \$208,406.07, based upon the amount invested of \$150,000.00 (\$135,000.00 in August 1982 plus \$15,000.00 in September 1983), plus interest of \$119,813.07 at the legal rate of 12% per annum from the dates of purchase, less the income received of \$61,407.00. Claimant also requested attorneys' fees of \$70,000.00 and punitive damages of \$950,000.00. Respondents requested the complete dismissal of all claims and dismissal of Claimant's request for punitive damages.

AWARD

On June 1, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 2, 1988, and by Respondent Hutton on November 9, 1988 and by Respondent Sory on June 1, 1989. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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, Inc.
2. Respondent, Sory, shall be and hereby is liable and shall pay to Claimant the amount of One and 00/100 (\$1.00) Dollar.
3. Respondent, Hutton, shall be and hereby is liable and shall pay to Claimant damages in the amount of Seventy Two Thousand Two Hundred Twenty and 00/100 (\$72,220.00) Dollars plus interest at the legal rate of 12% per annum in the amount of Forty Three Thousand Three Hundred Thirty and 00/100 (\$43,330.00) Dollars for a total of One Hundred Fifteen Thousand Five Hundred Fifty and 00/100 (\$115,550.00) Dollars.
4. Respondent, Hutton, shall be and hereby is liable and shall pay to the Claimant the further amount of Ten Thousand and 00/100 (\$10,000.00) Dollars for attorneys' fees pursuant to Section 517.211, Florida Statutes.
5. Claimant's request for punitive damages shall be and hereby is dismissed in all respects.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, Hutton, shall be and hereby is assessed forum fees in the amount of Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars (three sessions x \$750.00), of which \$750.00 shall be paid directly to Claimant, and \$1,500 shall be paid to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant for such forum fees.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

The Panel found that the statute of limitations applicable to the 1933 Securities Act was not applicable in this case brought pursuant to Section 517.211, Florida Statutes.

ARBITRATORS CONCURRING

Joseph L. Bernstein, Esq., Norris L. Friedlander and Joseph M. Luby

Dated: June 20, 1989