

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Among

Wayne Becker and Arleen Becker

Claimants

vs.

Case #88-00448
Award

Tom W. Alison and Shearson Lehman Brother, Inc.

Respondents

Heard before:

Michael A. Caldwell
Ellwood F. Oakley, III
Robert Schaffer

Public arbitrator
Public arbitrator
Industry arbitrator

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD"). Claimants, Wayne and Arleen Becker ("Beckers"), alleged Respondent, Tom W. Alison ("TWA"), made numerous omissions and misrepresentations of material facts when he presented the "Variable Hedger" options program to the Beckers. The Beckers contended they always sought relative safety of principal with maximum income after taxes. Claimants alleged TWA concealed the high risk involved in this investment. Claimants stated TWA and Shearson Lehman Hutton, Inc. ("SLH") knew or should have known the representations made by TWA were false and knew and intended that the Beckers would rely on these representations.

Respondent, TWA, stated the Claimants' claims were barred by the Statute of Limitations. TWA denied Claimants sought relative safety of principal with maximum income after taxes as their investment objective and that TWA wrongfully induced Claimants to participate in unsuitable investments. Respondent, TWA, denied Claimants' allegations regarding fraudulent representations.

Respondent, SLH, asserted the Claimants' claims were barred by the Statute of Limitations. SLH averred they explicitly informed the Beckers of the risks inherent in their investments.

RELIEF REQUESTED

Claimants requested actual damages in the amount of no less than \$840,000.00, plus \$1,000,000.00 in punitive damages, interest, costs, and attorneys' fees.

Respondent, TWA, requested the Statement of Claim be dismissed in its entirety, plus costs.

Respondent, SLH, requested the Statement of Claim be dismissed in its entirety, actual damages on its Counterclaim of \$50,000.00, costs and attorneys' fees.

AWARD

On January 10-11, February 19-20, June 26-27, July 18-19, September 24 & 28, October 23, November 19-20, 1990 and January 3-4, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants, Beckers, on April 26, 1988 and by the Respondents, TWA and SLH, on June 24, 1988 and June 22, 1988, respectively. The hearings were held in Atlanta, GA at the NASD and consisted of 25 sessions. 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 following decision was communicated to the parties on October 31, 1990: Upon the joint motion of Respondents to dismiss with prejudice the Claimants' cause of action and after a full opportunity for briefing and oral argument citing the relevant case law, the decision of the Panel of Arbitrators in the above-referenced matter is to grant the motion to dismiss all of the Claimants' claims with the exception of the following:
a- "Failure to Supervise"; b- "Suitability";
2. Claimants are entitled to recover from Respondents damages in the amount of \$170,798.91;
3. The above amount is assessed jointly and severally against Respondents Shearson and Alison;
4. After the Panel reached its decision, while the award was being circulated for signatures of the Panel Members, but before the decision had been fully executed and delivered to the NASD for service upon the Parties, the Panel learned from a Representative of the Director of Arbitration that Claimants and Respondent Alison had reached a settlement of all Claims and Counterclaims between them. The Panel has not been informed of the substance, terms, or basis of the settlement. The Panel has not considered the settlement in making the award, except as explicitly stated herein. If the settlement includes an amount to be paid to the Claimants by Alison, that amount shall be credited against the total award due Respondents. The

apportionment of the damages between the Respondents and the extent to which either Respondent may be required to make contribution to the remaining award, if any, are not matters presently before the Panel; we therefore, do not decide those issues herein;

5. All other Motions, Claims and Counterclaims by all parties, including those for attorneys' fees and expenses, are denied and each party shall bear the sole responsibility for its own attorneys' fees and expenses;

6. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$1,000.00 filing fee previously deposited by the Claimants;

7. Irrespective of any settlement, Forum fees are payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure and are assessed as follows:

- a. Against Respondent Shearson \$0.00;
- b. Against Respondent Tom Alison \$16,666.66;
- c. Against Wayne and Arleen Becker \$8,333.33;

8. Arbitrator Oakley dissented from assessing any forum fees against the Claimants. As customers with meritorious claims it was felt by Mr. Oakley that the Beckers should not have to share in the cost of the NASD arbitration.

ARBITRATOR SIGNATURES

_____/s/
Robert Schaffer

_____/s/
Michael A. Caldwell

_____/s/
Ellwood F. Oakley, III

March 5, 1991