

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
LOUIS WALTER HERRING and KATHY HERRING,)
) Claimants,)
) Case #88-00533
vs.) Award
)
SHEARSON LEHMAN BROTHERS, INC. and)
)
LAWRENCE D. MARKMAN,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Richard A. Freeman, Esq.
Clifford P. Hoch, M.D.
Andy Fernandez

CASE SUMMARY

This claim was filed with the NASD, Inc. on February 22, 1988. The hearing was conducted in Fort Lauderdale, Florida on June 26, August 8 and 9, 1989 with a total of five (5) sessions.

Claimants, Louis Walter Herring and Kathy Herring ("the Herrings"), alleged that Mr. Herring was unsophisticated in investing; opened a discretionary account with Respondent, Shearson Lehman Brothers ("Shearson") with Respondent, Lawrence D. Markman ("Markman") as his account executive; that Markman churned Claimants' accounts; that the investments in Claimants' accounts, which included options and limited partnerships, were unsuitable in light of their stated investment objectives; that Respondents violated SEC Rule 10b-5 and Section 17(A) of the 1933 Securities Act; that Respondents were negligent; breached their fiduciary duty; committed fraud; and, that Shearson is liable for Markman's misconduct on the theory of respondeat superior.

Respondents denied all allegations of wrongdoing; alleged that Claimants were fully advised of the risks of options trading; were aware of all transactions in their accounts and failed to timely complain of them; that Mr. Herring directed the transactions in his account; that the trades were suitable and made with Claimants' authority and understanding of the risks involved. Respondents alleged the affirmative defenses of: failure to state a cause of action; good faith; damages not caused by Respondents; estoppel; ratification; culpable conduct of Mr. Herring; lack of reasonable reliance; authorization; assumption of risk; failure to mitigate damages; waiver; suitability; laches; statute of limitation; collateral estoppel; res judicata; and, accord and satisfaction.

RELIEF REQUESTED

Claimants requested damages for decline of portfolio value in the amount of \$115,000.00; for commissions generated by churning in the amount of \$105,661.58; prejudgment interest and punitive damages. Respondents requested dismissal of claims and costs.

AWARD

On June 26, August 8 and 9, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on February 18, 1988, and by Respondents Shearson on May 5, 1988 and by Markman on August 9, 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 originals remain on file with the NASD, Inc.
2. Respondent, Shearson, is hereby liable and shall pay to Claimants the amount of Forty Two Thousand Five Hundred Two and 00/100 (\$42,502.00) Dollars.
3. Respondent, Markman, is hereby liable and shall pay to Claimants the amount of Twenty One Thousand Two Hundred Fifty One and 00/100 (\$21,251.00) Dollars.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, Shearson, is hereby assessed forum fees in the amount of Three Thousand Seven Hundred Fifty and 00/100 (\$3,750.00) Dollars (five sessions x \$750.00), of which Seven Hundred Fifty and 00/100 (\$750.00) Dollars shall be paid directly to Claimants and Three Thousand and 00/100 (\$3,000.00) Dollars 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 Claimants.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Richard A. Freeman Esq., Clifford P. Hoch, M.D., and Andy Fernandez

Dated: September 11th, 1989