

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Irvin B. Perry and Patricia A.                      Claimants  
Perry

vs.

Shearson Lehman Brothers, Inc.                      Respondents  
and William Brainerd

AWARD

CASE NO. 88-01115

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 8, 1988. Claimants alleged unsuitability and unauthorized transactions. Specifically, Claimants alleged that on October 6, 1987 while Claimants were on vacation, Respondents purchased 20 S&P 100 November 310 puts; that upon discovery of this transaction Claimants placed a sell order on October 13, 1987 which Respondents failed to execute; and that the recommended options trading and strategy were unsuitable to Claimants' investment goals and objectives.

Respondents denied the allegations and maintained that the trading strategy was at all times represented to Claimants as risky and highly volatile; that the options trading claimants wished to engage in to realize profits was fully understood by Claimants and suitable for their background and objectives; that the sale of 20 S&P 100 November 310 put options on October 6, 1987 was authorized by Claimants; and that Respondents covered Claimants' short position on October 19, 1987 so as to protect Claimants' remaining assets.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages, as amended in their post-hearing brief, for actual damages of \$191,176.95, interest at 10% for two and one-half years of \$47,794.00, arbitration fees of \$1,125.00 and punitive damages of \$165,000.00.

Respondents requested dismissal of the claim and costs.

### DAMAGES AND RELIEF AWARDED

On February 28, March 1 and March 21, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 1, 1988 and by Respondents Shearson Lehman Hutton, Inc. on July 18, 1988 and William C. Brainerd on June 7, 1988. The hearing was held in Los Angeles, California and lasted six sessions. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the post-hearing submissions, has determined in full and final resolution of the issues submitted for determination as follows:

1. Claimants are hereby awarded the sum of One Hundred Thirty-Eight Thousand Dollars and Zero Cents (\$138,000.00) assessed against Respondents jointly and severally.
2. Claimants are further awarded interest on the sum of \$138,000.00 calculated at 8% for the period of November 1, 1987 through April 30, 1990 assessed against Respondents jointly and severally.
3. All other claims are dismissed.
4. The parties shall each bear their respective costs including attorneys' fees.
5. Pursuant to Section 43 of the NASD Code of Arbitration Procedure:
  - a. the NASD shall retain the \$750.00 filing fee previously deposited by the Claimants; and
  - b. Respondents are jointly and severally assessed the sum of \$750.00 representing forum fees and shall pay this amount to the National Association of Securities Dealers, Inc. directly.

### OTHER ISSUES

At the close of the hearing on March 21, 1990, Respondent was given leave to respond to the memorandum submitted by the Claimants on February 28, 1990, and Claimant was given leave to file a reply to the response submitted by Respondent.

The parties stipulated to the execution and service of the award in counterpart copies.

PRESIDING ARBITRATORS

DATE SERVED: 05/17/90

Mary E. Cobb  
Mary E. Cobb