

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Beatrice B. Toberman

Claimant

and

E.F. Hutton & Co., Inc.;
Charles S. Aker

Respondents

A W A R D

88-1178

CASE SUMMARY

In a claim filed with the NASD on April 14, 1988, Claimant Beatrice Toberman ("Toberman") alleged that Respondents E.F. Hutton & Co., Inc. ("Hutton") and Charles Aker ("Aker") made unauthorized and unsuitable trades for her securities account maintained at Hutton and serviced by Aker. Additionally, Aker engaged in fraud, breached his fiduciary duty, breached the contract between Toberman and Hutton, made misrepresentations and violated the Arizona Racketeering Statute, all of which caused losses in Toberman's securities account.

Hutton and Aker maintained that Toberman was suitable for all trades placed in her account, that she specifically authorized all trades and that no misrepresentations were made to Toberman by Aker. Any losses were the result of market fluctuation and therefore Hutton and Aker are not liable for damages.

RELIEF REQUESTED

Toberman requested judgment on out of pocket losses in the amount of \$6,890.07, pre and post judgment interest, costs and attorney's fees, punitive and exemplary damages and treble damages under the Arizona Racketeering Act. Hutton and Aker requested dismissal of the Claim in its entirety and an award of costs and attorney's fees against Toberman.

AWARD

On Tuesday, May 16, 1989 and Wednesday, May 17, 1989 in Phoenix, Arizona, during a hearing lasting three sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 18, 1988 by Claimant Beatrice Toberman and on July 22, 1988 by Jonathan Morris on behalf of Respondent E.F. Hutton & Co., Inc. n/k/a Shearson Lehman Hutton, Inc. Respondent Charles S. Aker did not execute a submission to arbitration but answered the claim, appeared at the hearing and testified. Pursuant to Section 12 of the NASD Code of Arbitration Procedure and the NASD By-laws Aker is required to submit to arbitration at the insistence of a public customer. Aker is, therefore, bound by the final decision of the panel on all issues submitted.

The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the legal memoranda of the respective parties, has decided in full and final resolution of the issues submitted for determination as follows:

1. Hutton and Aker are jointly and severally liable for and shall pay to Toberman the sum of Four Thousand Seven Hundred Seventy Three Dollars and No Cents (\$4,773.00);
2. No interest is awarded on the above-stated sum;
3. The claim for punitive, exemplary and treble damages shall be and is hereby dismissed in its entirety;
4. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$200.00 filing fee previously deposited with the NASD by Toberman. Additional forum fees in the amount of \$200.00 are assessed and payable to the NASD by Toberman and additional forum fees in the amount of \$200.00 are assessed and payable to the NASD jointly and severally against Hutton and Aker.

By the Panel

Dated: July 5, 1989

/S/ Warren C. Kotzmann, Esq.
Presiding Chairman

Dated: July 8, 1989

/S/ R. Daniel Boone

Dated: July 8, 1989 _____

/S/ C. Dee Simpson