

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Shearson Lehman Hutton, Inc. )

) Case No. 88-01489

Name of Respondent(s) )

Richard Henry )

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.

Public

Virginia Rhyne

Public

Joseph M. Luby

Industry

REPRESENTATION

Claimant, Shearson Lehman Hutton, Inc. ("Shearson"), was represented by Debra Jenks, Esq. of Boose, Casey, Ciklin, Lubitz, Martens, et al.

Respondent, Richard Henry ("Henry"), was represented by John Stetson, Esq. of John P. Stetson, Attorney at Law.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 9, 1988. Claimant alleged that Respondent was liable for a debit balance in his options account.

In an Amended Statement of Answer filed with the NASD on September 12, 1990, Respondent denied liability and asserted a counterclaim alleging: that Henry was induced into investing in options, which investments were not suitable for Henry in light of the stated investment objectives for the account; Henry's account was churned; Claimant misrepresented, among other things, the risks involved in options trading and misrepresented that the securities were not being purchased on margin; Claimant executed unauthorized trades; negligence; breach of contract; breach of fiduciary duty; failure to supervise; civil theft; and violation of the Florida RICO Act.

In a Statement of Reply filed with the NASD on November 26, 1990, Claimant/Counter Respondent denied liability and alleged that Henry: was a sophisticated investor; was kept apprised of the status and profitability of his account; never objected to any of the trades; and never relinquished control of his account such that a claim for churning could exist.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$297,437.00 plus interest at the rate of 12% per annum plus costs and attorney's fees and dismissal of the counterclaim.

Respondent requested dismissal of the claim and costs and counterclaimed for damages in the amount of \$561,632.00 plus interest, attorney's fees, costs, and treble and other punitive damages.

#### AWARD

On November 29 and 30, 1990, and May 21 and 23, 1991, in Fort Lauderdale, Florida, during a hearing lasting eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Michael O'Leary on behalf of Claimant on May 5, 1988, and signed by Respondent on November 29, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 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.
2. Respondent is found liable and shall pay to the Claimant the amount of \$297,437.00, plus interest at the legal rate of 12% per annum from May 5, 1988 to June 17, 1991, in the amount of \$111,282.18 for a total due to the Claimant of \$408,719.18.
3. Claimant's request for attorney's fees and costs is denied.
4. Claimant/Counter Respondent is found liable and shall pay to the Respondent/Counter Claimant the amount of \$297,437.00, plus interest at the legal rate of 12% per annum from May 5, 1988 to June 17, 1991 in the amount of \$111,282.18, for a total due to the Counter/Claimant of \$408,719.18.
5. Respondent/Counter Claimant's request for attorney's fees, costs and punitive damages is denied.
6. Respondent/Counter Claimant's Motion for Sanctions is denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,000.00 (8 sessions x \$1,000.00 per session). Claimant is hereby assessed \$4,000.00 plus the additional \$500.00 non-refundable filing fee pursuant to Section 44 of the Code for which the NASD shall retain the \$750.00 previously deposited by Claimant in partial satisfaction thereof. Respondent is hereby assessed \$4,000.00 payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/S/  
William A. Fleck, Esq.

/S/  
Virginia Rhyne

/S/  
Joseph M. Luby

Date of Decision: June 26, 1991