

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Donna M. and Ted C. Simpson

Claimants

and

Shearson Lehman Hutton, Inc.
Robert C. Behrens

Respondents

A W A R D
88-01596

CASE SUMMARY

In a claim filed with the NASD on May 17, 1988, Claimants Donna M. and Ted C. Simpson ("The Simpsons") alleged that Respondents Shearson Lehman Hutton, Inc. ("Shearson") and Robert C. Behrens ("Behrens") misrepresented the risks of option trading and that options trading in and for the Simpson's securities account was unsuitable. Additionally, the Simpsons alleged that Shearson and Behrens breached fiduciary duties owed to the Simpsons, were negligent and violated the Arizona racketeering statute. Shearson also allegedly failed to adequately supervise and control Behrens activities in connection with the Simpson's account.

Shearson denied that it was responsible for damages, if any, incurred by the Simpsons. Shearson alleged that the Simpsons understood and were aware of the risks attendant to options trading and that the Simpsons were suitable for the type of options trading which took place in their account.

Shearson asserted a counterclaim against the Simpsons for an unsecured debit balance which occurred in the Simpson's account on or about October 19, 1987.

Ted Simpson answered the counterclaim and denied that the debt balance was valid or that he promised to cover it.

Behrens denied the allegations of the Statement of Claim and alleged that he never misrepresented or omitted to disclose any of the risks involved in options trading. Behrens further alleged that Mrs. Simpson fully understood these risks. Behrens also asserted certain affirmative defenses including, but not limited to, assumption of risk, estoppel, waiver, and laches.

Behrens asserted a counterclaim against Mr. Simpson for indemnification if Behrens was found liable because Mrs. Simpson alleged that she was unaware of and did not consent to certain trades transacted in the Simpsons' joint account. Additionally, Behrens alleged that the Simpsons were comparatively negligent and therefore were responsible for their own, or each other's damages in direct proportion to their percentage of fault.

Mrs. Simpson answered Behren's counterclaim and denied any negligence on her part.

RELIEF REQUESTED

The Simpsons requested damages of \$50,000, unspecified punitive damages, treble damages under the Arizona RICO Statute, pre- and post-judgment interest, costs, attorneys' fees and cancellation of the debit balance in their account.

Shearson requested dismissal of the claims asserted against it and an award of \$40,000 plus interest on the debit balance of the Simpson's account. Additionally, Shearson sought costs and attorneys' fees incurred in defending the claims.

Behrens requested dismissal of the claims and an award of his costs and reasonable attorneys' fees. Behrens prayed for judgment against Ted Simpson on his counterclaim for indemnity in an amount equal to any judgment against Behrens on the claim and a determination of comparative fault and contribution concerning the relative fault of the parties.

Ted Simpson requested dismissal of Shearson's counterclaim and Donna Simpson also requested dismissal of Behren's counterclaim.

AWARD

On Wednesday, August 30, 1989 in Scottsdale, Arizona during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on May 3, 1988 by Claimants Donna M. and Ted C. Simpson, on November 15, 1988 by Mary E. Reisert on behalf of Respondent Shearson Lehman Hutton, Inc. and on November 17, 1988 by Respondent Robert C. Behrens.

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

CLAIMS OF THE SIMPSONS

1. The claims asserted against Shearson and Behrens by the Simpsons shall be and are hereby dismissed in their entirety;

SHEARSON'S COUNTERCLAIM

2. Ted Simpson alone is liable for and shall pay to Shearson on its counterclaim, the sum of Twenty Two Thousand, Five Hundred Fifty Eight Dollars and Fourty Six Cents (\$22,558.46);

3. No interest is assessed or is payable to Shearson on the above-stated sum;

BEHREN'S COUNTERCLAIM

4. Behrens' counterclaim shall be and is hereby dismissed in its entirety;

5. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter;

6. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$750.00 filing fee previously deposited with the NASD by the Claimants and Shearson is assessed and shall pay to the NASD, as additional forum fees, the sum of \$750.00; and

7. Arbitrator Peter Kay concurs in the dismissal of Ted Simpson's claim in its entirety but respectfully dissents from the panel majority and would award Mrs. Simpson the sum of Twenty Six Thousand Four Hundred Three Dollars and Fifty Two Cents (\$26,403.52) from Shearson and Behrens on her claim asserted against the Respondents. Additionally, Mr. Kay would find against Shearson on its counterclaim for an award of any other damages.

Panel Members Concurring

Dated: September 20, 1989

/S/ Richard L. Cobb, Esq.
Presiding Chairman

Dated: September 19, 1989

/S/ Marc Faigus

Panel Members Dissenting

Dated: September 14, 1989
Peter Kay

/S/ Peter Kay