

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Irwin M. Potash M.D. P.A. Def.Ben. Plan

FINAL ORDER
CASE #88-01780

Name of Respondent(s)

E.F. Hutton & Company, Inc.
Stephen Phillip Whitman

Heard before the members of the Arbitration Panel:

Philip F. Ludovici, Esq.
Andy Fernandez
Andrew Bartfay

CASE SUMMARY

This claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on May 27, 1988. The hearing was conducted in Fort Lauderdale, Florida on December 19, 1990, with a prehearing conference on January 17, 1990, for a total of three (3) sessions.

Claimants, the Trustees of the Irwin M. Potash, M.D., P.A. Defined Benefit Plan ("Trustees"), alleged that Respondents, E.F. Hutton & Co., Inc. n/k/a Shearson Lehman Hutton, Inc. ("Hutton") and Stephen P. Whitman ("Whitman"), were liable for: engaging in a reckless and imprudent investment strategy of purchasing and selling options and writing naked options, said strategy being unsuitable for a pension plan; executing unauthorized trades; breaching their fiduciary duty; violating Title 29 U.S.C. Section 1104, the rules and regulations of the Securities and Exchange Commission and the Securities and Exchange Acts of 1933 and 1934; and handling the account in an improper manner subsequent to the 1987 crash.

Respondents alleged that: Mr. Potash wished to speculate in the account; Whitman had authorization to trade options; Claimants were knowledgeable and sophisticated investors; and losses were attributable to the October 1987 Market Crash.

RELIEF REQUESTED

Claimants requested damages in the amount of \$44,849.00.

Respondents requested dismissal of the claim plus costs.

AWARD

On January 17, 1990 and December 19, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on April 27, 1988, and by Respondents, Hutton, on August 2, 1988, and Whitman on August 9, 1988. 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. Respondents' Motion to Dismiss with Prejudice is hereby denied.
2. This arbitration panel hereby dismisses this case, without prejudice, for the following reasons:
 - a. Claimant failed to produce a copy of the pension plan which opened the account although ordered to do so on March 27, 1990 pursuant to a Motion to Compel Production dated December 19, 1989. Claimant was again ordered to produce a copy of the pension plan on December 19, 1990, the morning of the hearing, and failed to do so.
 - b. The pension plan, which opened the account, was no longer in existence, the funds having been disbursed.
 - c. Based on (a) and (b), it was unclear whether Dr. Potash was a Trustee of the pension plan and, if he was, whether he had authority to represent the nonexistent pension plan.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of One Thousand Two Hundred and 00/100 (\$1,200.00) Dollars (2 sessions x \$400.00 per session plus \$400.00 for the prehearing conference held on January 17, 1990). Claimants are hereby assessed One Thousand Two Hundred and 00/100 (\$1,200.00) Dollars for which the NASD shall retain the Four Hundred and 00/100 (\$400.00) Dollars previously deposited in partial satisfaction thereof.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING


Philip F. Ludovici, Esq.


Andrew Bartfay


Andy Fernandez

Dated: February 4, 1991