

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
Dr. Samuel I. Levy,)
) Claimant,)
) Case #88-01869
vs.) Award
)
Shearson, Lehman, Hutton, Inc.,)
)
Philip Chmielewski and Stanley Jaffe,)
)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Craig Edward Stein, Esq.
Mr. Geoffrey Swan
Mr. Carl J. Hegner

CASE SUMMARY

This claim was filed with the NASD, Inc. on June 8, 1988. The hearing was conducted in Fort Lauderdale, Florida on November 1, 1989 with a total of four (4) sessions.

Claimant Dr. Samuel Levey ("Levey"), alleged that Respondents E.F. Hutton, Inc. n/k/a Shearson Lehman Hutton, Inc. ("Hutton"), Philip Chmielewski ("Chmielewski") and Stanley Jaffe ("Jaffe") were liable for: violations of Article III, Sections 1 and 27 of the NASD Rules of Fair Practice; failure to supervise; breach of contract breach of fiduciary duty; misrepresentation and negligence. Specifically, Claimant alleged that Respondents wrongfully liquidated his account despite the agreement to accept triple-A municipal bonds as security for the account. Respondents alleged that Claimant: was notified of the pending liquidation of the account; was told that the bonds would be sufficient to satisfy the margin call only if the bonds could be transferred into Claimant's account by the following day and that the margin account was liquidated pursuant to Claimant's express authorization.

RELIEF REQUESTED

Claimant requested damages in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim and costs.

AWARD

On November 1, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 23, 1988, by Respondents Chmielecki and Jaffe on September 27, 1988, and by Respondent Hutton on September 16, 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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, Inc.
2. Respondent Shearson is hereby liable and shall pay to Claimant the amount of Thirty Seven Thousand Five Hundred Ninety-Three and 50/100 (\$37,593.50) Dollars inclusive of interest at the rate of 7.41%.
3. Respondent Jaffe is not liable, and, therefore, all claims against him are hereby dismissed.
4. Respondent Chmielecki is not liable, and, therefore, all claims against him are hereby dismissed.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Four Thousand and 00/100 (\$4000.00) Dollars (\$1000 x 4 sessions). Claimant is hereby assessed forum fees in the amount of One Thousand and 00/100 (\$1000.00) Dollars. Respondent Hutton is hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3000.00) Dollars. The NASD, Inc. shall retain the One Thousand and 00/100 (\$1000.00) Dollar filing fee previously deposited by the Claimant in full satisfaction of his share of such forum fees.
6. 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

Craig Edward Stein, Esq.
Mr. Geoffrey Swan
Mr. Carl J. Hegner

Dated: December 6, 1989