

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Ralph N. Goldwyn, Trustee for Claimant
First Commercial Finance Defined
Benefit Pension Plan, Dated
August 1, 1978

vs.

Shearson Lehman Hutton, Inc. Respondents
and David Smith

AWARD

CASE NO. 88-02074

SUMMARY OF ISSUES

Claimant alleged purchases of the common stock of SAY Industries were made on the advice, recommendation and insistence of Respondents. Claimant also alleged that Respondents misrepresented the potential risks of investing in SAY Industries, and that purchases of a sizable number of shares of this growth stock were unsuitable for inclusion in the portfolio of the defined benefit pension plan, because all investments for this account are required by ERISA provisions to be prudent and conservative.

Respondents denied all Claimant's allegations, and asserted that all investment decisions for this account were made, as required for pension plan accounts, in the sole discretion of Claimant, an experienced, sophisticated investor, as well as the Trustee and principal beneficiary of the defined benefit pension plan.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of approximately \$100,000.00; at the hearing this calculation of damages was revised to \$80,187.00.

Respondents requested dismissal of the claim and an award of attorneys' fees.

DAMAGES AND RELIEF AWARDED

This claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on June 27, 1988. On February 21 and 22, and March 14, 1990

in Los Angeles, California in an arbitration hearing lasting seven sessions, the undersigned arbitrators heard the controversy between the parties pursuant to submissions to arbitration signed by Claimant on behalf of the Trust on June 8, 1988, and by Respondents Shearson Lehman Hutton, Inc. on March 20, 1990 and David Smith on March 22, 1990. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing briefs, has determined in final resolution of the issues submitted as follows:


1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of Four Thousand, Six Hundred Dollars and Zero Cents (\$4,600.00).
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant.

PRESIDING ARBITRATORS

DATE SERVED: 05/14/90

Thomas M. Adams, Esq.

Stephen E. Haberfeld, Esq.



J. David Kall

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