

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Weber R. Lawler, Jr.  
Mary Elizabeth Lawler

Claimants

CASE #88-02108  
AWARD

vs.

Shearson Lehman Hutton, Inc.  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
James Hedine

Respondents

CASE SUMMARY

In a claim received by the NASD on June 29, 1988, Claimants Webster R. and Mary Elizabeth Lawler ("Claimants") alleged that Respondent James I. Hedine, ("Hedine") acting within the scope of his employment committed intentional and affirmative fraud by making thirteen unauthorized trades using national market facilities from the offices of Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Shearson Lehman Hutton, Inc. ("Shearson") located in Washington, D.C., Claimants alleged that the actions of Hedine amounted to common law fraud, violations of District of Columbia Securities Laws, breach of fiduciary duty, violation of Securities Exchange Act of 1934 rules and regulation 10b-5 and 10(b) respectively, violation of Securities Act of 1933 Section 17(a), common law negligence, violations of 18 U.S.C. 1962 et seq. the Racketeer Influenced and Corrupt Organization Act, intentional infliction of emotional distress, breach of contract and violations of Oklahoma Securities Laws. Claimants alleged that Respondents Merrill Lynch and Shearson are responsible for Respondent Hedine misconduct on the theory of respondeat superior.

Respondents Merrill Lynch and Shearson categorically deny all allegations made by Claimants. Respondent Merrill Lynch asserted a crossclaim against Respondents Hedine and Shearson. Respondent Shearson asserted a crossclaim against Respondents Hedine and Merrill Lynch.

RELIEF REQUESTED

The Claimants requested damages of \$838,725.11 plus attorneys fees. This amount represents direct losses = \$118,638.69; commissions charged = \$4,945.71; damages for emotional distress = \$100,000.00; margin interest = \$14,806.16; punitive damages = \$200,000.00; and damages under 18 U.S.C. Section 1964(c) = \$400,334.55. Respondent Merrill Lynch requested that the claims asserted against it be dismissed and that the panel award Merrill Lynch costs and attorneys' fees. Respondent Shearson requested that the claims asserted against it be dismissed and that its costs and attorneys' fees be assessed against Claimants. To the extent that Shearson is held liable for

Dated: September 11, 1989

any damages in connection with the maintenance of the Claimants account at Shearson, Shearson respectfully seeks indemnification and/or contribution from Hedine to the extent Shearson is held liable for any damages in connection with the maintenance of the Claimants account at Merrill Lynch, Shearson respectfully seeks indemnification and/or contribution from Merrill Lynch and Hedine.

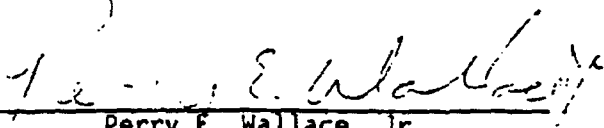
AWARD

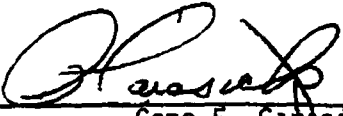
On June 21 and 22 and August 4, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Webster R. and Mary Elizabeth Lawler on June 8, 1988, and by Respondent Shearson Lehman Hutton, Inc. on October 20, 1988, and by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on August 8, 1988. Respondent James Hedine was served with the Claimants Statement of Claim and received notice of date, time and location of the scheduled hearings. Hedine did not attend the hearings, however, did attempt to submit a late answer. Pursuant to Section 29 of the Code of Arbitration Procedure, the arbitrators proceeded with the arbitration of the controversy. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the arbitrator exercised jurisdiction of Respondent Hedine. Pursuant to Section 25(b)(2)(iii) of the Code of Arbitration Procedure, the arbitrators did not accept Respondent Hedine's late answer. 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. That Respondents Merrill Lynch and Hedine are jointly and severally liable to the Claimants and shall pay the sum of Eighty One Thousand Two Hundred Twenty 00/100 Dollars (\$81,220.00); inclusive of interest
2. That Respondent Shearson and Hedine are jointly and severally liable to the Claimant and shall pay the sum of Sixty Three Thousand Eighty Hundred Sixty 00/100 Dollars (\$63,860.00); inclusive of interest
3. Additionally, Respondent Hedine is liable to the Claimants for punitive damages in the amount of Fifty Thousand 00/100 Dollars (\$50,000.00)
4. Pursuant to Section 43 of the Code of Arbitration Procedure, forum fees shall be equally assessed such that Respondents Shearson, Merrill Lynch and Hedine shall each pay \$1,000.00 in forum fees to the National Association of Securities Dealers, Inc. Claimants are also assessed forum fees in the amount of \$1,000.00 but is entitled to offset this amount with Claimants filing fee, such that no additional monies are due from the Claimants.

5. The parties shall each bear their respective costs including attorney's fees.

ARBITRATORS CONCURRING

  
Perry E. Wallace, Jr.

  
Gene E. Carasick