

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

George A. Mackey

Claimant

Case #88-02119

vs.

Award

Shearson Lehman Hutton, Inc.

Respondent

Heard Before the Arbitration Panel: -----

CASE SUMMARY

This arbitration was filed on July 1, 1988. On June 27, 1986, Claimant George A. Mackey and his wife Audrey Mackey opened an account with Respondent with an initial deposit of \$129,000.00. Claimant alleges that his sole investment objective was the production of income with a target of \$1,164.00 per month and he was not interested in investing in low income or no income growth stocks. During the next six months Claimant alleges that the broker, Mark Bailey, suggested an investment in growth stocks and the use of margin. Claimant claims that he agreed to this plan provided that his monthly income did not erode. In January, 1988 Claimant alleges that he asked Bailey to sell all of the growth stocks in the account. Mr. Bailey followed these instructions. Claimant further alleges that he became so alarmed at the decline in value of his portfolio that he asked that another broker be assigned to his account. Respondent Shearson Lehman then assigned broker Susan Feld to the account.

Claimant presented the following issues to the panel for its consideration:

1. Did Mr. Bailey, as agent of Respondent Shearson Lehman Hutton, invest Claimant's money in securities which were inconsistent with Claimant's stated and agreed upon initial objective?
2. If Mr. Mackey's objectives, or strategy to achieve these objectives, changed during the course of the relationship, did Mr. Bailey, as financial advisor, so advise counsel and inform Claimant to a sufficient degree for him to make an informed decision?
3. If Respondent is found liable for damages, how much net income did Mr. Mackey lose due to Mr. Bailey's investment in securities inconsistent with Mr. Mackey's objectives?

4. If Respondent is found liable for damages, how much equity did Mr. Mackey lose due to Mr. Bailey's investment in securities inconsistent with Mr. Mackey's objectives?

Respondent presented the following issues to the panel in response:

1. Did Mr. Mackey authorize both the transactions and non-transactions in the account?
2. Did Mr. Mackey ratify both the transactions and nontransactions in the account?
3. Did Respondent Shearson Lehman Hutton, Inc. and Mr. Bailey exercise good faith in recommending securities to Claimant?
4. Did Respondent Shearson Lehman Hutton, Inc. and Mr. Bailey exercise reasonable care in recommending securities to Claimant?
5. Did Claimant waive his right to bring this claim?
6. Has Claimant met his burden of proving that Respondent and Mr. Bailey were the cause of his damages?
7. Did Claimant fail to mitigate his damages?
8. Has Claimant met his burden of proving his damages with specificity?
9. Has Claimant provided the panel with sufficient legal basis for his claim for margin interest costs?

RELIEF REQUESTED

Claimant Mackey requested damages of \$1,680.22 representing net income lost including margin costs. Claimant also requested \$16,443.00 representing net equity lost, punitive damages according to New York law and his costs. Respondent requested the dismissal of all claims and costs and attorney's fees.

AWARD

On June 6, 1989 in Seattle, Washington, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on July 26, 1988, and by Respondent on October 24, 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. Each and every claim of the Claimant is dismissed.
2. Claimant's claim of punitive damages is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.

OTHER ISSUES

There were two hearing sessions, however, no forum fees were assessed.

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant.

Date Served: 06-22-89

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