

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

ANNE THOMAS

Claimant

and

SHEARSON LEHMAN HUTTON, INC. AND  
NICK DIMINICO

Respondents

CASE NO. 88-02391

CASE SUMMARY

In a Statement of Claim filed with the NASD on July 28, 1988, Claimant Anne Thomas ("Thomas") alleged that Respondents Shearson Lehman Hutton, Inc. ("Shearson") and Nick DiMinico ("DiMinico") mismanaged her accounts by:

(1) Churning her margin account by turning over the account more than fourteen times in a thirteen month period, generating interest charges and commissions totaling more than \$237,000.00 representing approximately thirty-five percent of her \$625,125.00 investment;

(2) Engaging in unsuitable and unauthorized trading of stocks and zero coupon bonds without her informed consent;

(3) Engaging in unauthorized stock trading without receiving the prior approval of Thomas as required in the account agreement;

(4) Treating the account as a de facto discretionary trading account and breached their fiduciary duties by grossly mismanaging the account;

(5) Exposing Thomas to inappropriate risks based upon the investment goals she communicated to Shearson and DiMinico;

(6) Providing account summaries prepared by DiMinico which failed to contain accurate information regarding expenses and losses;

(7) Incurring excessive margin expense; and

(8) Failing to supervise the misconduct and over reaching of the broker.

In a Statement of Answer filed with the NASD in November of 1988, Respondents Shearson and DiMinico denied any allegations of wrongdoing, replying that (1) Thomas authorized the transactions and paid no commissions on the zero coupon bond transactions in the accounts; (2) Thomas was a sophisticated, knowledgeable investor who fully instructed, controlled, authorized and consented to each and every transaction; (3) DiMinico fully

informed Thomas of the risks and that the investment strategy was appropriate based on her goal of appreciation with risk; (4) the total margin interest charged the account equalled only \$19,046.68; (5) the account summaries prepared by DiMinico were to supplement the monthly account statements sent by Shearson; and (6) that the accounts made a total profit of \$196,214.44. In addition, Respondents alleged as an affirmative defense that (1) the Statement of Claim failed to state a claim upon which relief can be granted; (2) the demand for damages was improper as a matter of law; (3) the accounts made a combined profit of \$196,214.44; (4) Thomas was a sophisticated and experienced investor who had knowledge of the transactions made in her accounts and is estopped from bringing this action; (6) Thomas is barred from recovery because she ratified the transactions in question.

#### RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of \$237,000.00 for the commissions and interest wrongly obtained by Respondents, \$134,884.70 for the net loss in her accounts and the opportunity costs of the funds invested calculated at 8.5% interest on the \$625,000.00 investment. Additionally, Claimant also requested recovery of her attorneys' fees, accountant fees and costs of pursuing this matter.

Respondents requested that the Statement of Claim be dismissed in all respects and that the costs of this proceeding be assessed against Claimant.

#### PROCEDURAL MATTERS

In her Statement of Claim, Thomas moved to consolidate this matter with NASD Arbitration No. 88-02393, Jo Parasilite v. Shearson Lehman Brothers, Inc. and Nick DiMinico. The Respondents opposed this motion. The Director of Arbitration denied the motion on December 20, 1988 and Claimants were instructed they could raise this motion with the panel of arbitrators for final determination. The motion for consolidation was not raised by claimant before the panel of arbitrators.

In a motion filed with the NASD on May 21, 1990 and presented to the panel at the hearing, Claimant moved to Amend her Statement of Claim to request the recovery of the sum of \$1,000,000.00 in punitive damages from the respondents. After hearing the presentation of all parties, the panel of arbitrators went into an executive session and granted claimants motion to amend to include punitive damages.

AWARD

On June 6th and 7th, 1990 and July 24th, 25th, 26th, 27th, 30th, 31st, 1990 in Houston, Texas during a hearing lasting 15 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 22, 1988 by Claimant Anne S. Thomas. Respondents Shearson Lehman Hutton, Inc. and Nick DiMinico are a member and associated person respectively, were present and represented at the hearing by counsel, and are required to submit to arbitration pursuant to Section 12(a) of the NASD Code of Arbitration Procedure.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Shearson Lehman Hutton, Inc. and Nick DiMinico are jointly and severally liable for and shall pay to Claimant Anne Thomas the sum of \$125,000.00 plus interest at the rate of 10% per annum from July 31, 1990 until payment of award is made.

2. Claimants' request for punitive damages is hereby dismissed and denied in its entirety;

3. The parties shall each bear their own respective costs including attorneys' fees;

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$750.00 filing fee previously deposited with the NASD by the Claimant Anne Thomas. Respondent Shearson Lehman Hutton, Inc. is liable for and shall pay forum fees to the NASD in the amount of \$11,250.00.

By the Panel

Dated: \_\_\_\_\_ /S/

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Judge Fred S. Harless  
Presiding Chair

Dated: 8-14-90 /S/

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*Felix L. High*  
Felix L. High, CPL

Dated: \_\_\_\_\_ /S/

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William J. Hawkins, Esq.

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By the Panel

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Judge Fred S. Harless  
Presiding Chair

Dated: \_\_\_\_\_ /S/

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Felix L. Nigh, CPL

Dated: 8/15/90 /S/

William J. Hawkins  
William J. Hawkins, Esq.

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By the Panel

Dated: August 13, 1990 /S/

Fred S. Harless  
Judge Fred S. Harless  
Presiding Chair

Dated: \_\_\_\_\_ /S/

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Felix L. Nigh, CPL

Dated: \_\_\_\_\_ /S/

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William J. Hawkins, Esq.