

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Thomas G. O'Connell

Claimant

vs.

Shearson Lehman Hutton, Inc.
and
Ronald Smith

Respondents

AWARD

CASE #88-02640

SUMMARY OF ISSUES

This case was filed on August 18, 1988. Claimant, Thomas G. O'Connell alleges that Respondents, Shearson Lehman Hutton, Inc. and Ronald Smith engaged in a series of speculative investments in common stocks that were inappropriate in light of Claimant's investment objectives which were appreciation with safety.

Claimant also alleges that Respondent churned his account by making 184 transactions in Claimant's account between May 29, 1985 and December 30, 1986 for which Respondent received approximately \$60,000.00 in commissions.

Claimant alleges that the above acts constitute violation of Section 10(b) of the Securities and Exchange Act of 1934, as amended, (15 U.S.C sec 78;(b)), rule 10(b) 5; common law fraud and deceit, breach of fiduciary duty, conversion, and violation of the covenant of good faith and fair dealing.

Respondents allege Mr. O'Connell was a highly sophisticated investor and was fully apprised of the risks attendant to his purchases and sales of stock, that each and every transaction was authorized by him, and that the element of control necessary to establish churning was not shown.

Respondents also allege that the Claimant failed to mitigate his damages when he made the decision not to liquidate his account.

DAMAGES AND RELIEF REQUESTED

Claimant seeks to recover \$101,641.00 in out-of-pocket loses, as a result of churning in his account, plus punitive damages.

Respondent seeks dismissal of the claim in its entirety and that they be awarded costs and attorneys fees.

DAMAGES AND RELIEF AWARDED

On February 1 and 2, 1990 in Beverly Hills the undersigned arbitrators heard the controversy in three sessions between the parties as set forth in submissions to arbitration signed by Claimant Thomas G. O'Connell on July 30, 1988 and by Respondent Shearson Lehman Hutton, Inc. on December 7, 1988. Respondent Ronald Smith stipulated to the jurisdiction of the panel. 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. Shearson Lehman Hutton, Inc. and Ronald Smith are jointly and severally liable and shall pay to Claimant the sum of Ninety Thousand Six Hundred Eighty Four Dollars and No Cents (\$90,684.00).

2. No prejudgment interest is awarded.

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

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc ("NASD") Code of Arbitration Procedure:

a: The NASD shall retain the \$750 filing fee previously deposited by the Claimant.

b: Respondents Shearson Lehman Hutton, Inc. is assessed and shall pay to the NASD \$750.00 in forum fees.

DATE SERVED: 03/16/90

ARBITRATORS CONCURRING


Frank R. Smith

J. Robert Arkus

John E. Wells