

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Annette Perri,

Claimant

vs.

Shearson Lehman Hutton, Inc.
and Neil S. Mitchell,

Respondents

Case #88-02759

Award

CASE SUMMARY

Claimant alleges that his broker had a limited discretionary authority over his account. Claimant further alleges: (1) that the brokerage firm, Shearson Lehman Hutton, Inc., through its registered representatives, Ann Kaspar and Neil Mitchell, provided Claimant with unsuitable investment advice in light of his stated objections which was not to invest more than \$125,000.00; (2) that Shearson Lehman Hutton, Inc. through Ann Kaspar and then through Neil Mitchell churned the account by recommending sales for the purpose of generating commissions; (3) that Respondents breached their contract by failing to follow Claimant's directives and place stop loss orders for 40,000 shares of Santa Fe Southern Pacific at \$62.00 per share; (4) that Respondents committed fraud by inducing him to maintain the 40,000 shares of Santa Fe stock which resulted in the sale of 5,000 shares of U.S. Home Corp., 3,000 shares of Citicorp, 5,000 units of Permian Partners and then the 40,000 shares of Santa Fe; (5) that Respondent, Shearson Lehman Hutton, Inc., failed to properly supervise the brokers and is therefore liable under the theory of respondeat superior; and (6) that Respondents failed to send the prospectus for Citicorp as required under the law.

Respondents admit that the registered representative had limited discretionary authority over Claimant's account but deny the allegations of churning, the unsuitability of the investments and fraud. Respondents further allege that the prospectus was received by the Claimant.

RELIEF REQUESTED

Claimant requests that the Panel award him damages in the amount of \$3,139,946.86 and rescind the purchase of the 3,000 shares of Citicorp. Respondents request that the Panel dismiss the Statement of Claim and

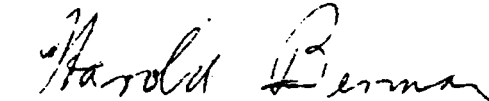
counterclaims for attorney's fees. In response to Respondents' request for attorney's fees, Claimant requests that the Panel deny this request.

AWARD

On July 19 and 20, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in a submission to arbitration signed by Claimant, Annette Perri, on August 21, 1988 and by Respondent, Shearson Lehman Hutton, Inc., on December 8, 1988. Respondent, Neil S. Mitchell, did not sign a Submission Agreement, but appeared and defended the claims asserted against him. 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. All claims asserted by Claimant, Annette Perri, are hereby dismissed in their entirety.
2. The parties shall each bear their respective costs including attorneys' fees;
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$1000.00 filing fee previously deposited by the Claimant and Claimant is further assessed \$1000.00 in forum costs. Respondent, Shearson Lehman Hutton, Inc. is assessed \$2,000.00 in forum costs. All costs shall be made payable to the NASD.


W. Cullen MacDonal, Esq.


Harold Berman, Esq.


Joseph F. Keenan, Esq.

Dated: August 30, 1989