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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration)	
Between	)
	)
Raymond D. and Christine M.	)
Madia,	)
	)
Claimants	)
	)
vs.	)
	)
Shearson Lehman Hutton, Inc.	)
	)
Respondent	)
	)
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Case #88-02829

Award

CASE SUMMARY

Claimants allege that they informed their broker, Robert Fragasso, about their investment objectives to the effect that although they were willing to accept some risk with respect to the amount of income generated by their investments, they wanted an investment program which insured the return of their invested capital. Claimants further allege that Robert Fragasso made unsuitable recommendations and induced them to invest \$10,000.00 in Damson Oil and Income Fund Limited Partnership #8403. Claimants also allege that the broker breached his fiduciary duty to them and negligently misrepresented that the investment guaranteed the return of their principal. Claimants further allege that Respondent is negligent in allowing its broker to make the misrepresentation and failed to properly supervise the broker.

Respondent maintains that no misrepresentations were made and that it was not negligent in the handling of Claimants' investment.

Respondent further moves preliminarily to dismiss the claims on two grounds:

1. The Statutes of Limitation governing federal and Pennsylvania securities and common law claims have expired; and
2. There is no private right of action based upon a violation of the NASD Rules of Fair Practice.

Claimants, in opposition to the Motion to Dismiss assert, among other things, that the Affirmative Defenses were not timely raised so that Respondent is estopped from interposing these defenses; that the NASD Rules of Fair Practice permit private recovery and in any event establish the standards of conduct against which Respondent's duty toward Claimants are to be judged; that the claims are not barred by application of the proper statutes of limitation under Pennsylvania law; and that Respondent is estopped from invoking the bar of the statute of limitations by the course of conduct and concealment following the investment transaction.

#### RELIEF REQUESTED

Claimants request that the Panel award them the amount of their investment, \$10,000.00, upon assignment of their interest in the partnership to the Respondent. Respondent requests that the Panel dismiss the claim and assess costs against the Claimants.

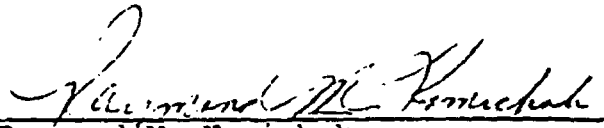
#### AWARD

On June 8, 1989, the undersigned arbitrator heard the controversy between the parties as set forth in a submission to arbitration signed by Claimants, Raymond D. and Christine M. Madia, on August 25, 1988 and by Respondent, Shearson Lehman Hutton, Inc., 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. The motion to dismiss claims based on the existence of a private right of action for violation of the NASD Rules of Fair Practice is granted.
2. The motion to dismiss claims based upon federal and state securities antifraud laws on the ground that such claims are time barred is granted. However, the motion to dismiss based upon Pennsylvania statutes of limitation as applied to claims of negligent misrepresentation and breach of fiduciary duty is denied.
3. Respondent is hereby liable and shall pay Claimants the sum of Eight Thousand Three Hundred and Twenty-One Dollars and Zero Cents (\$8,321.00)

upon tender by the Claimants to Respondent of a certificate or other instrument duly endorsed for transfer representing 245 units of limited partnership interest in Damson Income Energy Limited Partnership formed under the laws of the State of Texas.

4. The parties shall each bear their respective costs including attorneys' fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain \$100.00 of the \$200.00 filing fee previously deposited by the Claimant and shall assess Respondent \$100.00 in forum costs which is to be made payable to the NASD.

  
Raymond M. Komichak

Dated: August 17, 1989