

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Arnold G. Henrichsen Trust,  
Helen H. Wells, Trustee

88-03101

Name of Respondent(s)

E.F. Hutton & Company, Inc.

Heard before:

Name	Public/Industry
George H. Speciale, Esq. _	PUBLIC
B. N. Meldrum _____	PUBLIC
Lyle Davis _____	INDUSTRY

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 6, 1988.

Claimants alleged that Jim Nielsen, manager of the Provo E.F. Hutton office, conducted stock transactions in the trust's account, that Respondent failed to supervise Nielsen's trading, that Mr. Nielsen's strategy was unsuitable for the trust account, and that the losses in the portfolio appear to be a deliberate effort to conceal the problems from Helen Wells and to justify the trading activity within the account to her.

Respondent denied the material allegations contained in the Statement of Claim and denied that it is liable to Claimant for any monetary damages. Respondent alleged five affirmative defenses as follows:

1. the Statement of Claim fails to state a claim upon which relief can be granted. Claimant executed a document agreeing "to indemnify and hold harmless ... Hutton ...";
2. the Statement of Claim is barred by the doctrine of ratification;

3. the losses, if any, were caused in whole or in part by the conduct of Claimant and/or her authorized agents;
4. the transactions were suitable; and
5. Respondent acted in a proper, prudent and professional manner, and in accordance with all acceptable brokerage procedures, exchange and governmental regulations.

#### RELIEF REQUESTED

Claimant requested:

1. return of the commissions assessed by Hutton in the amount of \$45,000.00;
2. payment of the Trust's tax liabilities, net of providing for the tax benefits to accrue to the beneficiaries in the amount of \$6,339.00;
3. interest from the date of the commission at the Utah statutory rate of 10% prejudgment and 12% postjudgment; and
4. reimbursement of accounting fees in the amount of \$5,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety, and the costs of this arbitration be assessed against Claimant.

#### AWARD

On February 27 or 28, 1991 in Salt Lake City, Utah, during a hearing lasting four sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Helen H. Wells, Trustee for the Arnold G. Henrichsen Trust, on September 12, 1988 and signed by Stephanie B. Fine on December 9, 1988 on behalf of Respondent E. F. Hutton and Company, Inc.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim of Claimant is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section <43c> of the Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. In addition, Claimant and Respondent are each assessed \$750.00 for forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator(s) Signature

Date of Decision: \_\_\_\_\_

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George H. Speciale, Esq.

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B. N. Meldrum

  
\_\_\_\_\_  
Lyle Davis

Date of Decision: March 20, 1991