

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Fred Schwarz

Claimant

vs.

CASE #88-03532
AWARDShearson Lehman Hutton, Inc.
Richard Stein

Respondents

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 14, 1988, Claimant Fred Schwarz alleged Respondent Richard Stein was negligent and otherwise breached his fiduciary duties to Claimant by failing to fulfill his obligation to monitor or otherwise track market conditions relative to the XMI options transaction. Claimant further alleged as a result of the aforesaid conduct Respondent Shearson Lehman Hutton, Inc. was forced to cover Claimant's short sale causing the Claimant to sustain a loss. Respondents Shearson Lehman Hutton, Inc. and Richard Stein maintained the Claimant transferred his account from the Respondent Richard Stein, thereby removing the account and the positions in the account from Respondent Richard Stein's authority and oversight and therefore the Claimant had no basis upon which to assume the Respondent would remain committed to or be able to perform any undertaking he may have made in connection with the subject transaction. The Respondents Shearson Lehman Hutton, Inc. and Richard Stein further maintained the Claimant was keenly aware of his positions, exercised independent judgment with respect to the account and was both knowledgeable and demanding in his approach to investments.

RELIEF REQUESTED

Claimant requested damages of \$11,881.96 plus interest, costs and disbursements. Respondents requested dismissal of claim and that costs and disbursements be assessed against the Claimant.

AWARD

On December 13, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Fred Schwarz on October 28, 1988, and by Respondent Shearson Lehman Hutton, Inc. on January 17, 1989 and by Respondent Richard Stein on January 26, 1989. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in New York City, NY and consisted of three (3) hearing sessions. 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 claims of the Claimant Fred Schwarz be and hereby are dismissed in all respects.
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 \$400.00 filing fee previously deposited by the Claimant. In addition, the Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Eight Hundred Dollars and No Cents (\$800.00) to represent forum fees.

CONCURRING ARBITRATORS

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DATED: January 8, 1990

STATE OF *New York*
COUNTY OF *New York*

S.S.:

On this *8th* day of *January*, 1990, before me personally appeared ROBERT SEAMAN to me known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same

Jill A. Wile

STATE OF *New York*
COUNTY OF *New York*

NOTARY PUBLIC

S.S. 90

On this *8th* day of *January*, 1990, before me personally appeared HENRY H. BALTER to me known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same

Jill A. Wile

STATE OF *New York*
COUNTY OF *New York*

NOTARY PUBLIC

S.S. 90

On this *8th* day of *January*, 1990, before me personally appeared JOSEPH J. LEEGAN to me known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same

Jill A. Wile

NOTARY PUBLIC, State of New York
No. 4876
Commission Expires 12/13/90