



~~N.A.S.D. NASD~~

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimants

Harold W. Steele, Marcia Steele  
and Ruth Wood, trustees for  
H.S. Die & Engineering, Inc.  
Profit Sharing Plan and Trust

88-03554

Name of Respondents

E.F. Hutton & Company, Inc.  
Donald Chandler Dempsey  
Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimants Harold W. Steele, Marcia Steele and Ruth Wood, trustees for H.S. Die & Engineering, Inc. Profit Sharing Plan and Trust ("Claimants"): Joel E. Krissoff, of Farr & Oosterhouse.

For Respondents E.F. Hutton & Company, Inc., Donald Chandler Dempsey and Shearson Lehman Brothers, Inc. ("Respondents"): Gary Saretzky, of Hertz, Schram & Saretzky. Respondents were previously represented by Joseph A. Hancock, of Shearson Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed: November 9, 1988.

Claimants' Memorandum in Opposition to Respondents' Motion to File Counterclaim filed: May 8, 1991.

Claimants' Submission Agreement signed on: November 8, 1988.

Joint Statement of Answer filed by Respondents on: June 13, 1989.

Respondents' Joint Motion to File Counterclaim against Harold Steele, Marcia Steele and Ruth Wood filed: April 30, 1991.

Respondents' Joint Reply to Claimants' Memorandum in Opposition to Motion to File Counterclaim filed: May 13, 1991.

Respondent, Donald Chandler Dempsey's Submission Agreement signed on: May 22, 1989.

Respondent, Shearson Lehman Brother's Submission Agreement signed on: June

AWARD  
#88-03554

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14, 1989.

HEARING INFORMATION

Hearing Dates/Sessions: July 17, 1990/1 session  
July 19, 1990/1 session  
July 20, 1990/1 session  
June 20, 1991/2 sessions  
June 21, 1991/2 sessions  
September 26, 1991/2 sessions  
September 27, 1991/2 sessions

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimants alleged Donald Chandler Dempsey ("Dempsey") solicited them to open a securities account, in or about 1981, on behalf of the H.S. Die and Engineering, Inc. Profit Sharing Plan and Trust ("Plan"). Claimants stated Dempsey assured them the Plan's account would be invested in safe and conservative securities. Claimants alleged that between July 13, 1981 and July 1, 1983, the Plan deposited in excess of \$400,000.00 into its account. Claimants stated Dempsey effected transactions for the Plan's account by making representations to Claimants which had no reasonable basis in fact.

Claimants alleged that in February 1984, Dempsey recommended the purchase of 10,000 shares of Convergent Technologies, Inc. ("Convergent"). Claimants stated Convergent rose in value to \$26.00 a share and they wished to sell; however, Dempsey insisted the stock would rise still higher. Claimants stated Dempsey continued to recommend against selling Convergent (even as it began to decline) and recommended the Plan continue to purchase shares in the belief the stock would rise. Claimants asserted Dempsey invested approximately \$68,000.00 in Convergent on behalf of the Plan, on or about October 24, 1984.

Claimants alleged that in May 1986, Dempsey recommended the Plan open a margin account. Claimants alleged Dempsey impressed upon them his experience as an investment advisor and induced them to follow his investment recommendations. Claimants alleged Dempsey did not explain the consequences of using a margin account.

Claimants alleged Dempsey invested approximately \$16,500.00 in Convergent on behalf of the Plan, on or about June 6, 1986, and \$38,750.00 in Convergent, on or about January 16, 1987. Claimants alleged Dempsey sold the Plan's total of 42,000 shares of Convergent resulting in a loss of \$130,874.00.

AWARD  
#88-03554

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Claimants stated they instructed Dempsey to carefully select securities and reiterated these instructions after losing money in Convergent.

Claimants alleged Dempsey recommended the Plan purchase \$209,600.00 of Crazy Eddie, Inc. ("Crazy Eddie") on or about February 27, 1987. Claimants stated Dempsey made this investment on behalf of the Plan. Claimants alleged Dempsey invested \$120,000.00 in Crazy Eddie on or about July 20, 1987. Claimants alleged these recommendations were made in total disregard of the investment goals of the Plan. Claimants stated Crazy Eddie went down \$5.00 a share by the Spring of 1988 and they ceased doing business with Dempsey on behalf of the Plan and transferred the account to another firm.

Claimants alleged Respondents were liable under the doctrines of Common Law Fraud; Negligence; Breach of fiduciary duty; and Violation of Sect. 451.810(a) (2) of the Michigan Compiled Laws.

Respondents denied all allegations of wrongdoing and denied they had any liability to the Claimants.

Respondents alleged Harold W. Steele ("Steele") controlled the Plan's account and directed the transactions therein.

Respondents stated Steele contacted Dempsey and stated that a friend of his had recently invested his entire portfolio in Convergent. Respondents stated Steele decided to invest approximately \$210,000.00 in Convergent and that this was an unsolicited transaction. Respondents also asserted Steele was advised of the risks of this transaction.

Respondents stated Claimants' allegation of wanting to sell Convergent in February 1984, when it had risen to approximately \$26.00 a share and Dempsey dissuaded them from doing so, was false. Respondents alleged Convergent never rose above \$20.00 a share at any time subsequent to February 10, 1984.

Respondents also alleged the purchase of Convergent in October 1984 was an unsolicited transaction initiated by Steele.

Respondents alleged that in May 1986, Steele contacted Dempsey stating he had a friend who provided him with information regarding Excel Industries ("Excel"). Respondents stated the Excel purchases were unsolicited and that the establishment of the margin account was also Steele's idea. Respondents alleged Steele sought a margin account to obtain leverage to purchase additional shares of Excel.

Respondents alleged additional purchase of Convergent in 1986 & 1987 were also unsolicited and initiated by Steele.



Arbitration

AWARD  
#88-03554

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Respondents stated the Crazy Eddie purchases of stock in February 1987 and July 1987 were bought upon Dempsey's recommendation based upon research he received from a stock analyst with E.F. Hutton and Company, Inc. Respondents stated the purchases were all discussed with Steele and were authorized by him. Respondents claimed that as Claimants are members of a class action against Crazy Eddie, currently pending in Federal Court, they are estopped from pursuing this matter within this arbitration.

Finally, Respondents alleged this arbitration pertained solely to the Crazy Eddie investment. Respondents stated the Convergent investment occurred in 1984 and was unsuccessful from the beginning. Respondents contended the Claimants never alleged there was wrongdoing on the part of Respondents concerning that investment. Respondents alleged the Convergent claims were add-on claims to bolster the Crazy Eddie claim which Respondents alleged should not be heard during this arbitration.

#### RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$915,522.81; interest; and attorney's fees.

Respondents requested: the Statement of Claim be dismissed and attorneys' fees.

#### AWARD

The parties have agreed the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

After considering the pleadings, the testimony and the evidence presented at the hearing and the post hearing submission of Respondents regarding attorneys' fees, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1- Respondent Donald Chandler Dempsey is liable to the Claimants, Marcia Steele and Ruth Wood, Trustees for H.S. Die & Engineering, Inc. Profit Sharing Plan and Trust and shall pay to those Claimants the sum of FIFTY THOUSAND 00/100 DOLLARS (\$50,000.00);
- 2- Respondents Donald Chandler Dempsey, E.F. Hutton & Company, Inc. and Shearson Lehman Brothers are jointly and severally liable to the Claimants, Marcia Steele and Ruth Wood, Trustees for H.S. Die & Engineering, Inc. Profit Sharing Plan and Trust and shall pay to those Claimants the sum of TWO HUNDRED THIRTY TWO THOUSAND FOUR HUNDRED SIXTY SIX 00/100 DOLLARS

AWARD

#88-03554

(\$232,466.00);

3- Claimant Harold W. Steele is excluded from sharing in the Award as a member of the H.S. Die & Engineering, Inc. Profit Sharing Plan and Trust;

4- All other claims are dismissed;

5- The parties shall each bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 previously deposited by Claimants (\$250.00 of which was the non-refundable filing fee) and the following Forum Fees are assessed.

10 sessions X \$1,000.00 = \$10,000.00 minus \$750.000 hearing session deposit previously deposited by Claimants.

Forum fees Assessed Against:

1- Respondents E.F. Hutton & Company, Inc. and Shearson Lehman Brothers, Inc., jointly and severally, in the amount of \$9,250.00. In addition, Respondents E.F. Hutton & Company, Inc. and Shearson Lehman Brothers, Inc. hereby are liable and shall pay to the Claimants the sum of \$750.00 to offset the hearing session deposit previously deposited by Claimants.

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

ARBITRATION PANEL

  
Carole M. Crosby/Public Arbitrator