

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Leonard J. Lewis

Claimant

vs.

Shearson Lehman Hutton, Inc., and
Ronald J. Smith

Respondent(s)

AWARD

CASE NO. 88-03574

SUMMARY OF ISSUES

This claim was filed on November 15, 1988. Claimant alleged: Misrepresentation in the sale and purchase of shares of a publicly traded company, VMX, Inc. (VMX). Specifically, respondents represented VMX as having a virtual monopoly in the field of voice message systems, was adequately capitalized, had excellent management, was likely to continue to produce good earnings, had valid patents and copyrights to preserve its competitive dominance, had good short- and long-term prospects, and its price per share would rise by a substantial amount within one year.

Respondents denied each and every allegation and any liability for monetary damages. They alleged that each purchase in Claimant's account was authorized by him and subsequently ratified.

DAMAGES AND RELIEF REQUESTED

Claimants requested:

1. Compensatory damages of \$136,939.00.
2. Interest at the legal rate in the State of California from date of purchase.
3. Punitive damages in the amount of \$500,000.00.

Respondents request their costs.

DAMAGES AND RELIEF AWARDED

On August 15 and 16, 1989 in Salt Lake City, Utah, the undersigned arbitrators heard in four sessions the controversy between the parties as set forth in submissions to arbitration signed by Claimant November 8, 1988 and by Respondent Shearson Lehman Hutton on March 1, 1989. Respondent Ronald Smith did not sign a submission agreement but submitted by stipulation at the hearing subject to confirming with his bankruptcy attorney. 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. Respondent Shearson Lehman Hutton Inc., only, is liable for and shall pay to Claimant compensatory damages of \$66,439.00.

2. Respondent Shearson, only, is liable for and shall pay to Claimant interest on the above amount (\$66,439.00) at the legal rate of interest in the State of California from October 29, 1985 to the date of this award.

3. Each and every claim against Respondent Ronald Smith is dismissed.

4. The claim for punitive damages against both Respondents is dismissed.

5. The parties shall each bear their respective costs including attorneys' fees.

6. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant.

In accordance with Section 43 the arbitrators assess forum fees as follows:

A) Against Claimant in the sum of \$2,000.00, payable to the NASD, which is reduced by the \$1,000.00 filing fee already deposited; and

B) Against Respondent Shearson Lehman Hutton, only, in the sum of \$2,000.00.

OTHER ISSUES

None applicable.

ARBITRATORS CONCURRING

DATE SERVED: 09/11/89

A. Robert Thorup

Al T. Hays

ARBITRATORS DISSENTING

Floyd K. Howell
Floyd K. Howell