

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
Helen L. Maloney,)
) Claimant,)
) Case #88-03718
vs.) Award
)
Shearson Lehman Hutton,)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.
Mr. Norris L. Friedlander
Mr. S. Richard Savage

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 2, 1988. The hearing was conducted in Fort Lauderdale, Florida on August 22 and 23, 1989, with a total of 4 sessions.

Claimant, Helen L. Maloney ("Maloney") alleged that Respondent, Shearson Lehman Hutton ("Hutton") was liable for: placing her in an unsuitable investment; failing to disclose the risks involved in that investment; failing to provide a prospectus; fraud; negligence; and violations of Florida Statutes Sections 517.07, 517.301, 831.01, and 772.103. Specifically, Claimant alleged that Respondent, through its employee, placed her in a certain oil and gas limited partnership, which investment was contrary to Claimant's stated investment objectives, and forged Claimant's signature on the Assignment of Partnership Interest. Respondent alleged that: Claimant was suitable for this investment; Claimant received a prospectus; any losses were due to unforeseen circumstances and Respondent was not negligent. Additionally, Respondent asserted the affirmative defenses of: failure to state a claim; waiver; estoppel; laches; ratification; good faith and denied the allegation of forgery.

RELIEF REQUESTED

Claimant requested rescission of the sale, damages in the amount of One Hundred Ten Thousand Five Hundred Fifty and 00/100 (\$110,550.00) Dollars inclusive of interest, punitive and treble damages pursuant to Florida Statutes Sections 772 and 768, attorney's fees pursuant to Florida Statute Section 517 and other costs. Respondent requested dismissal of the claim, attorney's fees and other costs.

AWARD

On August 22 and 23, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 23, 1988, and by Respondent on February 22, 1989. 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 parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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, Inc.
2. Respondent, Hutton, is hereby liable and shall pay to Claimant, within 30 days from the date of this Award, the amount of One Hundred Thirty-Seven Thousand One Hundred Ninety and 00/100 (\$137,190.00) Dollars in recission of any ownership interest in Hutton/Apache 1982 Energy Income Fund, LTD. The One Hundred Thirty-Seven Thousand One Hundred Ninety and 00/100 (\$137,190.00) Dollars represents One Hundred Ten Thousand Five Hundred Fifty and 00/100 (\$110,550.00) Dollars in damages, inclusive of interest at the legal rate of 12% per annum; Twenty Three Thousand Seven Hundred Ninety and 00/100 (\$23,790.00) Dollars in attorney's fees pursuant to Florida Statute Section 517; and Two Thousand Eight Hundred Fifty and 00/100 (\$2,850.00) Dollars in costs.
3. Within 30 days from the date of this Award and concurrent with the payment of the above referenced One Hundred Thirty-Seven Thousand One Hundred Ninety and 00/100 (\$137,190.00) Dollars, Claimant shall tender to Respondent any certificates held by her evidencing ownership or any such documents reasonably required to evidence the transfer of ownership of Claimant's interest in Hutton/Apache 1982 Energy Income Fund, LTD.
4. Respondent's request for attorney's fees is hereby dismissed in all respects.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrators have assessed forum fees in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars (\$1000 x 4 sessions). Claimant is hereby assessed forum fees in the amount of Two Thousand and 00/100 (\$2,000.00) Dollars. The National Association of Securities Dealers, Inc. shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such forum fees. Respondent is hereby assessed forum fees in the amount of Two Thousand and 00/100 (\$2,000.00) Dollars to be paid to the NASD, Inc.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Myron Dunay, Esq.

Dated: September 18,