

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Alexander Sytman, M.D., Claimants
Custodian for Daniel Sytman,
and Leatrice Sytman

vs.

Shearson Lehman Hutton, Inc., Respondents
Daniel Burr and Stanley Schill

AWARD

CASE NO. 88-03822

SUMMARY OF ISSUES

This case was filed on December 19, 1988. Claimants alleged that they invested in the Lord Abbett Mutual Fund, that Claimants were never informed by Respondents about the option of signing up for a telephone transfer privilege, that not having the ability to sell by telephone severely limited the liquidity and suitability of this investment, and that because of Respondents' negligence and breach of fiduciary duty, Claimants were unable to liquidate shares in the Fund and suffered heavy losses unnecessarily. Respondents alleged that the telephone exchange privileges were fully disclosed in written prospectuses provided to Dr. Sytman, that Section 10(b) of the 1934 Securities Exchange Act requires that scienter be established and there is no evidence of scienter, that the damages are overstated, that there is no fiduciary duty, and that there is no violation of the Washington Consumer Protection Act.

DAMAGES AND RELIEF REQUESTED

Claimants requested in their Statement of Claim damages of \$35,568.50. Claimants' Pre-Hearing Submission requested damages of \$34,045.38, calculated as exemplary damages of \$10,000, damages of \$16,338.10, prejudgment interest of \$3,839.45, and attorneys' fees in the amount of \$3,867.83 as of April 3, 1990. Respondents requested that the Statement of Claim be dismissed and that Respondents be awarded their costs, including attorneys' fees.

DAMAGES AND RELIEF AWARDED

On April 11, 1990, in Seattle, Washington, the undersigned arbitrators heard the controversy in two sessions between the parties as set forth in submissions to arbitration signed by Claimants on November 16, 1988 and February 22, 1989, by Respondent Shearson Lehman Hutton, Inc. on May 23, 1989, by Respondent Daniel Burr on June 2, 1989 and by Respondent Stanley Schill on June 20, 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. Each and every claim of Claimants is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure:
 - a. the NASD shall retain the \$400 filing fee previously deposited by the Claimant; and
 - b. Claimants are assessed forum fees in the amount of \$400 to be paid directly to the National Association of Securities Dealers, Inc.

OTHER ISSUES

Claimants filed an Objection to Filing Answer, which Respondents opposed. The arbitration panel ruled that Claimants' motion was denied and the answer of Respondents would not be barred.

PRESIDING ARBITRATORS

DATE SERVED: 05/31/90

Joseph Roberts

Elwood Avery

Monte Anthony