

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

ANN M. KMIT AND DENNIS KMIT

Claimants

and

SHEARSON LEHMAN HUTTON, INC. AND
WILLIAM H. STEWART

Respondents

CASE NO. 89-00039

CASE SUMMARY

In a claim filed with the NASD on January 3, 1989 Claimants Ann M. Kmit and Dennis Kmit ("Claimants") a registered representative of Respondent Shearson Lehman Hutton, Inc. ("Shearson") made material misrepresentations which were relied upon by claimants when they purchased 5,000 shares of Jiffy Lube International, Inc.

In their joint Answer filed with the NASD on May 3, 1989 Respondents Shearson and Stewart (collectively as "Respondents") stated that Respondent Stewart recommended the purchase of Jiffy Lube International, Inc. in good faith and based on sound opinions related to Jiffy Lube International, Inc.'s actual and anticipated market share.

RELIEF REQUESTED

Claimants requested an award in the amount of \$25,000.00, interest from the date of purchase and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed.

PROCEDURAL SUMMARY

On February 23, 1990, Respondents filed a Motion to Dismiss. In support of the Motion, Respondents stated that Claimants are participants in a class action settlement and are therefore bound by the terms of that settlement. On March 1, 1990, Claimants filed their response to the Motion to Dismiss wherein they stated that Respondent held the shares of Jiffy Lube International stock in street name and as a result, claimants were not given the opportunity to knowingly choose whether or not to participate in the class action. The panel denied the Motion to Dismiss.

On March 9, 1990, Respondents presented a supplemental Motion to Dismiss after the commencement of the hearing. After hearing argument on this Motion the panel held the matter under advisement and asked the parties to submit post-hearing briefs by March 30, 1990, and proceeded with the presentation of the parties case in chief. After reviewing the parties' post-hearing submissions, the panel has determined to deny the Motion to Dismiss.

AWARD

On Friday, March 9, 1990, in Minneapolis, Minnesota during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 30, 1989 by Claimants Ann M. Kmit and Dennis Kmit, on February 8, 1989 by Stephanie Fine on behalf of Respondent Shearson Lehman Hutton, Inc.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Shearson Lehman Hutton, Inc. and William H. Stewart shall be and hereby are jointly and severally liable for and shall pay to Claimants the sum of Five Thousand Dollars (\$5,000.00); and

2. Each party shall bear its own costs and expenses not specifically enumerated herein; and

3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimants Ann M. Kmit and Dennis Kmit.

By the Panel

Dated: 5-7-90 /S/ John W. Harrigan, Esq.
Presiding Chair

Dated: 5-3-90 /S/ Thomas Donald Redmond

Dated: 5-2-90 /S/ Lawrence Walter Carlsen

Date Served: 5-17-90