

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Mary Ann Ervin, Trustee

Claimant(s)

and

Shearson Lehman Hutton, Inc.

Respondent(s)

CASE NO. 89-00078

CASE SUMMARY

In a claim filed with the NASD on or about January 13, 1989, Mary Ann Ervin, Trustee ("Claimant") alleged that Shearson Lehman Hutton, Inc. ("Respondent") failed to sell and liquidate the assets held by Respondent in an account opened with the Respondent by Claimant's deceased husband, claimant alleged that on March 18, 1987, Floyd G. Ervin ("Claimant's Husband") established a trust appointing himself as Trustee. Claimant's husband then transferred all of his real and personal property to the Trust. Claimant alleged that under the terms of the Trust, upon the death of claimant's husband, the claimant became the Trustee. Claimant's husband died on July 21, 1987. Claimant alleged that prior to October 14, 1987, claimant attempted to sell and liquidate the assets held in the account of Respondent. Claimant alleged that Respondent wrongfully and unreasonably required that an estate be established with claimant be appointed Executor of the state of Claimant's husband and that Respondent required that Claimant provide a copy of Letters Testamentary. Claimant further alleged that during the time period required to obtain such Letter Testamentary, Respondent failed to protect the assets held in Claimant's account to her detriment.

In its answer filed with the NASD on or about May 30, 1989, Respondent denied any liability or responsibility for the loss which occurred in the Claimant's account. Respondent denied that, prior to the death of the Claimant's husband, it was advised of the establishment of the alleged trust or advised of the transfer of property of said trust. Respondent stated that the account was an individual account. Respondent denied that the property contained in the account was ever transferred or requested to be transferred from the individual account.

Respondent stated affirmatively that the client has failed to state with any specificity what transactions were requested. Respondent affirmatively stated that it acted at all times reasonably in requiring that an estate be established and the Claimant or other individual be appointed the proper person to have control of the account in question. Further, the Respondent asserted that it did not have discretionary control over the account and at all times maintained the status quo with respect to the securities in the account. Respondent stated that it could not have anticipated the drastic fluctuation in the market nor could it have anticipated the affect on Claimant's husbands account.

RELIEF REQUESTED

Claimant requested damages in the amount of \$25,762.48 including reasonable interest from the original date of demand. In addition, Claimant requested reasonable attorneys' fees and costs incurred in pursuing this matter.

Respondent requested that the statement of Claimant be dismissed and that fees be assessed against the Claimant and Respondent requested such further relief to which it is entitled.

AWARD

On March 27, 1990 in Oklahoma City, Oklahoma, during a hearing lasting two sessions, including a pre-hearing conference with an arbitrator, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 6, 1989 by Claimant, Mary Ann Ervin, Trustee, on April 4, 1989 by Ester Koslow 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. The Statement of Claim shall be and hereby is dismissed;
2. Each party shall bear its own costs and expenses incurred in this matter including attorney's fees not specifically enumerated herein; and

