

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Maurice G. Germaine, as Trustee
of the Germaine Shoes, Inc.
Employee's Retirement Plan

and

89-00397

Name of Respondents

Shearson Lehman Hutton, Inc., George
Earl Allen and Earlene Marie Allen

REPRESENTATION OF PARTIES

Claimant was represented by Christopher G. Hamill, Esq. of Kalish, Forrester & Torres, Phoenix, Arizona.

Respondents were represented by Jesse B. Simpson, Esq. and Robert H. McKirgan, Esq. of Lewis and Roca, Phoenix, Arizona.

Earlene Marie Allen did not submit to arbitration.

CASE INFORMATION

The Statement of Claim was filed on or about February 9, 1989. Claimant's Submission Agreement signed on March 9, 1989 by Maurice G. Germaine on behalf of Germaine Shoes, Inc. Employee's Retirement Plan.

Statement of Answer filed by Respondents, Shearson Lehman Hutton, Inc. and George Allen on or about May 12, 1989. Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed on April 7, 1989 by Stephanie B. Fine.

HEARING INFORMATION

A pre-hearing conference with the full panel was held on Friday, December 13, 1991 lasting one (1) session.

The hearing was held on Wednesday, December 18, 1991, Thursday, December 19, 1991 and Friday, December 20, 1991 in Scottsdale, Arizona for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondents Shearson Lehman Hutton, Inc. ("Shearson") and George Earl Allen ("Allen") (collectively as "Respondents") made unauthorized option transactions in OEX options which were unsuitable for an employee's pension account, that Allen made misstatement of material facts or made untrue statements, breached their fiduciary duty to the claimant, violated the Arizona and Federal Racketeering statutes, common law fraud, consumer fraud, and that Shearson failed to properly supervise Allen.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Maurice G. Germaine certified that he had the power and authority to engage in option transactions. Respondents further stated that the account was not handled on a discretionary basis, that all transactions in the account were authorized by Mr. Germaine and executed on his instructions. Respondents denied engaging in unauthorized and unsuitable transactions in the account, denied having made any misstatements, denied having breached their fiduciary duty to the Claimant and denied the allegations of fraud. Respondents asserted the following affirmative defenses: the Statement of Claim fails to state a claim upon which relief can be granted; ratification and affirmation; assumption of the risk; failure to mitigate; and waiver.

RELIEF REQUESTED

Claimant requested an award of \$10,469.07 for trading losses, interest at the legal rate of 10% on the principal amount invested by the Claimant, \$49,351.32 for commissions paid, \$120.97 for margin interest, treble damages pursuant to A.R.S. Sec. 13-2314(A) ("Arizona RICO") and U.S.C. Sec. 1964 ("RICO"), punitive damages in an amount to be determined by the arbitration panel, costs, and attorney's fees.

Respondents Shearson and Allen requested that the Statement of Claim be dismissed in its entirety and that costs of this arbitration be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Earlene Marie Allen did not submit to arbitration.

Respondent George Earl Allen did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

During the pre-hearing conference with the full panel held on Friday, December 13, 1991, the panel considered the arguments of the parties relating to the outstanding motions of the parties and made the following rulings: Respondents' Motion to Dismiss for lack of standing was denied; and Respondents' Motion in Limine re other customer complaints was denied, the panel will consider the evidence and any objections raised by counsel at the time the evidence is presented. The panel did not decide the issue of who was the proper party Claimant at the time of conference call.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel finds in favor of Respondents and against Claimant on all claims and award the Claimant nothing.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. In addition the following forum fees are assessed:

Forum fees in the amount of \$2,750.00 assessed against Maurice C. Germaine.

Forum fees in the amount of \$2,750.00 assessed against Shearson Lehman Hutton, Inc.

Forum fees are calculated at the rate of \$1,000.00 per hearing session including the prehearing conference.

The NASD shall retain postponement fees previously deposited with the NASD, if any.

Fees are payable to the National Association of Securities Dealers
Inc.

Dated:

December 20, 1991



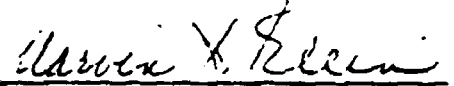
William M. Howard, Esq.
Presiding Chair
Public Arbitrator

December 20, 1991

Daniel J. Danvir

Daniel J. Danvir
Public Arbitrator

December 20, 1991



Marvin J. Klein
Industry Arbitrator