

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Roy J. Durbin

Claimant(s)

and

Shearson Lehman Hutton, Inc. and
John Williams

Respondent(s)

CASE NO. 89-00727

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CASE SUMMARY

1. John Williams ("Williams"), a registered representative of Shearson Lehman Hutton, Inc. (Williams and Shearson are collectively referred to herein as "Respondents") engaged in the following:

a. Made material misstatements and omissions regarding the purchase of option contracts and the purchase of 5,000 shares of Penwalt stock (the option contracts and Penwalt stocks are referred to herein as "the securities").

b. The securities recommended by Williams were unsuitable for the Claimant in light of the Claimant's sophistication, financial objectives, and financial condition; and

c. Williams told Claimant that he did not have to pay for the purchase of Penwalt stock.

2. Respondents are liable to the Claimants for fraud, breach of fiduciary duty, negligent misrepresentation and violation of CRS 1973, 11-51-125; and

3. Shearson failed to properly supervise Williams.

Respondents denied the claims of the Claimant and further alleged:

1. Claimant owes Shearson for the debit balance which exists in the Claimants account; and
2. The Claimants claims are barred by the following affirmative defenses:
 - a. failure to state a claim upon which relief can be granted;
 - b. the doctrines of waiver, estoppel, laches, ratification, and acquiescence by the Claimant in the conduct alleged; and
3. Shearson acted in compliance with the applicable rules and acted in good faith and did not induce any of the alleged acts constituting the alleged wrongful conduct.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$82,000, interest, exemplary damages, attorneys' fees and costs, and dismissal of Shearsons counterclaim.

Respondents requested dismissal of the Claimants claims. Shearson also requested it be awarded damages in the approximate amount of \$37,000, interest, and attorneys' fees and costs.

AWARD

On March 13, 1989, the NASD received the Claimant's claim. On April 19, 1990 and April 20, 1990, in a hearing lasting five sessions in Denver, Colorado, the undersigned arbitrators heard the controversy between the parties as set forth in the submissions to arbitration signed on February 22, 1989 by the Claimant, and on May 29, 1989 by the Linda Yarden on behalf of Shearson.

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:

Compensatory Damages and Interest	\$39,293.68
Attorneys' fees, expert fees, and costs	18,000.00
	<u>\$57,293.68</u>

3. Pursuant to Section 43 of NASD Code of Arbitration Procedure, the NASD shall refund the \$750.00 previously deposited by the Claimant and the Respondents shall be jointly and severally liable for and pay to the NASD \$2,000 as forum fees.

Dated: 5-17-90 /S/ Bruce W. Brady, C.P.A.
Presiding Chair

Dated: 5-15-90 /S/ Gerald W. Wischmeyer, Esq.

Date Served: 5-25-90