

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Marvin P. & Florence L. Anderson, Claimants  
William H. & Maridean F. Bennett,  
Vi L. Budden, Joyce K. Cowin,  
Thomas H. & Joy E. Kellough,  
Otto A. & Sylvia A. Ross and  
William C. & Vickie S. Tewalt

vs.

E. F. Hutton & Co., Inc., Respondents  
Shearson Lehman Hutton, Inc.,  
Stig Oftedal and Pamela Oftedal

AWARD

CASE NO. 89-01092

SUMMARY OF ISSUES

Claimants' common allegations are that Respondents: 1) misrepresented the suitability of various common stocks for their financial objectives and situations in life; 2) engaged in unauthorized trading; 3) churned their accounts; 4) negligently and/or intentionally negligently handled Claimants' accounts; 5) negligently and/or intentionally breached contracts with Claimants; 6) failed to execute certain stock transactions; 7) engaged in a common scheme to defraud Claimants in violation of the Consumer Protection Acts of the State of Washington, the State of New York, and the United States; and 8) acted with malice or with such recklessness as to infer malice.

Claimants Marvin P. Anderson and Florence L. Anderson ("Claimants Anderson") alleged separately and in addition that Respondents: 1) failed to place stop loss orders in the account; 2) made inappropriate and unsuitable recommendations regarding the sale of common stocks from their portfolio and the purchase of stocks on margin; 3) improperly purchased a non-marginable security, Greenery Rehabilitation, on margin; 4) misrepresented the potential return of common stocks purchased for the account; 5) failed to disclose the amounts of commissions; and 6) improperly concentrated the portfolio in two speculative common stocks -- Galactic Resources Ltd. and Greenery Rehabilitation.

Claimants William H. Bennett and Maridean F. Bennett ("Claimants Bennett") alleged separately and in addition that Respondents improperly failed to disclose the risks of buying stock on margin and improperly concentrated the portfolio in the speculative common stock of Galactic Resources Ltd.

Claimants Thomas H. Kellough and Joy E. Kellough ("Claimants Kellough") alleged separately and in addition that Respondents: 1) improperly concentrated the portfolio in the speculative common stock Galactic

Resources Ltd.; 2) negligently recommended and effected without authorization the purchase of stock on margin; 3) sold 9,000 shares of Galactic Resources Ltd. with the knowledge or consent of Claimants; and 4) failed to place stop loss orders in the account.

Claimants Otto A. Ross and Sylvia A. Ross ("Claimants Ross") alleged separately and in addition that Respondents failed to disclose the risk of purchasing stock on margin.

Claimants William C. Tewalt and Vickie S. Tewalt ("Claimants Tewalt") alleged separately and in addition that Respondents improperly concentrated their portfolios in the speculative common stock of Galactic Resources Ltd. and made unauthorized purchases of stock on margin.

Claimant Budden alleged separately and in addition that Respondents failed to disclose the risk of purchasing stock on margin and made unauthorized purchases of stock on margin.

Claimant Cowin alleged separately and in addition that Respondents placed her account on margin without her knowledge or consent.

Respondents denied all Claimants' general and individual allegations, including the allegations of unauthorized trading, unsuitability and misrepresentation. Respondents asserted that all claims asserted were exaggerated and conclusory in nature.

Respondents also asserted that Claimants Anderson controlled their account and were at all relevant times provided with accurate and complete information regarding their portfolio, and knew and understood the risks associated with their investments.

Respondents asserted that trading in the account of Claimants Bennett was controlled and authorized by Claimants and was suitable for them, given their investment objectives and financial status.

Respondents asserted that all trading in the account of Claimants Kellough was controlled and authorized by Claimants and was consistent with their investment objectives and financial status. Respondents asserted that Claimants Kellough were sophisticated and knowledgeable investors who understood the nature and risks of trading on margin. Respondents specifically denied these Claimants directed the placement of stop loss orders on Galactic Resources Ltd., but rather were advised that such orders could not be entered for over-the-counter stocks.

Respondents asserted that Claimants Ross were fully informed of the nature and risks of trading on margin and that all trading in this account was

controlled and authorized by Claimants in accordance with their investment objectives.

Respondents asserted that all trading in the account of Claimants Tewalt was specifically authorized by Claimants and was consistent with their investment objectives. Furthermore, Claimants were fully informed of the nature and risks of trading on margin.

#### DAMAGES AND RELIEF REQUESTED

Claimants requested damages, as amended at the hearing, as follows:

Claimants Anderson requested damages of \$21,083.00, lost profits of \$12,808.00, plus 12% prejudgment interest and punitive damages of treble the amount of damages, or alternative punitive damages of \$10,000.00 under the State of Washington Consumer Protection Act, RCW 19.86.010, et seq.

Claimant Budden requested damages of \$5,998.00, lost profits of \$21,702.00, plus 12% prejudgment interest and punitive damages of treble the amount of damages, or alternative punitive damages of \$10,000.00 under the State of Washington Consumer Protection Act, RCW 19.86.010, et seq.

Claimant Cowin requested damages of \$14,141.00, lost profits of \$5,374.00, plus 12% prejudgment interest and punitive damages of treble the amount of damages, or alternative punitive damages of \$10,000.00 under the State of Washington Consumer Protection Act, RCW 19.86.010, et seq.

Claimants Kellough requested damages of \$39,787.00, lost profits of \$36,276.00, plus 12% prejudgment interest and punitive damages of treble the amount of damages, or alternative punitive damages of \$10,000.00 under the State of Washington Consumer Protection Act, RCW 19.86.010, et seq.

Claimants Ross requested damages of \$1,619.00, lost profits of \$466.00, plus 12% prejudgment interest and punitive damages of treble the amount of damages under the State of Washington Consumer Protection Act, RCW 19.86.010, et seq.

Claimants Tewalt requested damages of \$22,159.00 (assuming the stock of PacCorp. had been left in the account), plus punitive damages of treble the amount of damages and 12% prejudgment interest, or in the alternative, damages of \$3,926.00, lost profits of \$6,326.00, punitive damages of treble the amount of damages and 12% prejudgment interest.

#### PROCEDURAL SUMMARY

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 11, 1989 upon agreement of the parties and Order

dated January 24, 1989 of the Superior Court of the State of Washington in and for Yakima County, Cause #88-2-00395-4. Two Claimants in the underlying action, Carl W. Anderson and Louise Anderson, voluntarily withdrew their claims and are not part of this arbitration claim. Two additional parties, Joyce K. Cowin and Vi L. Budden, have joined this arbitration claim since the original complaint in Cause #88-2-00395-4 was filed.

On April 4, 1989, a pre-hearing conference pursuant to Section 32(e) of the Code of Arbitration Procedure was conducted, lasting one (1) session.

The evidentiary hearing was held on April 16 and 17, May 10 and 11 and June 2 and 3, 1990 in Seattle, Washington and lasted 14 sessions.

The undersigned arbitrators heard the controversy between the parties pursuant to submissions to arbitration signed by Claimants as follows:

Marvin P. & Florence L. Anderson	March 6, 1989
William H. & Maridean F. Bennett	March 5, 1989
Vi L. Budden	March 22, 1989
Joyce K. Cowin	March 21, 1989
Thomas H. & Joy E. Kellough	March 20, 1989
Otto A. & Sylvia A. Ross	March 20, 1989
William C. & Vickie S. Tewalt	March 23, 1989

and by Respondents on April 24, 1990.

#### DAMAGES AND RELIEF AWARDED

The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, has determined in full and final resolution of the issues submitted as follows:

1. All claims against Pamela Oftedal are dismissed.
2. Respondent Shearson Lehman Hutton, Inc. is solely liable for and shall pay to Claimants Anderson the sum of \$2,500.00 plus interest at 12% from December 27, 1985 to June 1, 1990 (\$1,327.50). The Andersons' claim for punitive damages under the State of Washington Consumer Protection Act is dismissed.
3. Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally liable for and shall pay to Claimant Budden the sum of \$5,998.00 plus interest at 12% from January 15, 1988 to June 1, 1990 (\$1,711.43), plus punitive damages under the State of Washington Consumer Protection Act, RCW 19.86.090, in the amount of \$4,900.00.

4. Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally liable for and shall pay to Claimant Cowin the sum of \$7,649.26 plus interest at 12% from March 1, 1987 to June 1, 1990 (\$2,983.21) plus punitive damages under the State of Washington Consumer Protection Act, RCW 19.86.090, in the amount of \$765.00.

5. Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally liable for and shall pay to Claimants Kellough the sum of \$10,000.00 plus interest at 12% from May 15, 1987 to June 1, 1990 (\$3,653.33), plus punitive damages under the State of Washington Consumer Protection Act, RCW 19.86.090, in the amount of \$500.00.

6. Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally liable for and shall pay to Claimants Ross the sum of \$687.49 plus interest at 12% from February 9, 1987 to June 1, 1990 (\$273.17) plus punitive damages under the State of Washington Consumer Protection Act, RCW 19.86.090, in the amount of \$500.00.

7. Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally liable for and shall pay to Claimants Tewalt the sum of \$3,926.00 plus interest at 12% from April 29, 1987 to June 1, 1990 (\$1,455.24) plus punitive damages under the State of Washington Consumer Protection Act, RCW 19.86.090, in the amount of \$6,900.00.

8. Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally liable for and shall pay attorneys' fees under the State of Washington Consumer Protection Act, RCW 19.86.090, in the total amount of \$24,000.00 which represents the following:

Claimant Budden	\$5,500.00
Claimant Cowin	7,000.00
Claimants Kellough	7,500.00
Claimants Ross	500.00
Claimants Tewalt	<u>\$3,500.00</u>
	\$24,000.00

9. The parties shall each bear their own remaining attorneys' fees and costs.

10. In accordance with Section 43 of the NASD Code of Arbitration Procedure and the Order dated January 24, 1989 of the Superior Court of Yakima County, Washington, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimants. In addition, Respondents Shearson Lehman Hutton, Inc. and Stig Oftedal are jointly and severally assessed forum fees in the amount of \$15,000.00 as follows:

- a. \$1,000.00 to be paid to Claimants as reimbursement for the previously deposited filing fee; and

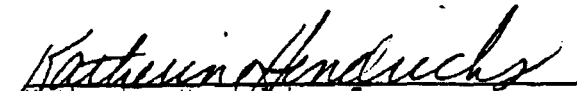
- b. \$14,000.00 to be paid directly to the National Association of Securities Dealers, Inc.

OTHER ISSUES

The arbitration panel acknowledges that Claimants William H. Bennett and Maridean F. Bennett settled their claim against all Respondents after commencement of the evidentiary hearing. This award, therefore, does not pertain to Claimants Bennett.

PRESIDING ARBITRATORS

DATE SERVED: 08/29/90

  
Katherine Hendricks, Esq.

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Martin O. Nelson, Jr.

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Martin O. Nelson, Jr.