

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
EASSA PROPERTIES, A FLORIDA GENERAL)
PARTNERSHIP,)
) Claimant,)
) Case #89-01135
vs.) Award
)
SHEARSON LEHMAN, MICHAEL W. SWOFFORD)
and TERRY W. BISHOP)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Arthur J. Leibell, Esq.
Harry Polansky
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on April 14, 1989. The hearing was conducted in Fort Lauderdale, Florida on April 5, 6, 26 and 27, 1990, with a total of eight (8) sessions.

Claimant, Eassa Properties, A Florida General Partnership ("Eassa"), alleged that Respondents, Shearson Lehman Hutton, Inc. ("Shearson"), Michael W. Swofford ("Swofford") and Terry W. Bishop ("Bishop"), made misrepresentations of material fact and omitted to state material facts which operated to defraud Eassa; that as a result of Eassa's justifiable reliance on such misrepresentations and omissions, Claimant suffered a substantial loss; that Respondents took discretion over Claimant's accounts; wrongfully transferred monies from Claimant's cash bond account; wrongfully utilized Claimant's margin account and made unauthorized trades in Claimant's commodities account; that Respondents' actions constituted: common law fraud; breach of fiduciary duty; churning; failure to supervise; violation of Rules 405 and 408 of the New York Stock Exchange and Article III, Sections 1, 2 and 18 of the NASD Rules of Fair Practice; Section 10(b) of the 1934 Exchange Act; Section 517.301, Florida Statutes; Section 812.035(7), Florida Statutes (Civil Theft); Title 18 U.S.C., Section 1962(c) (RICO); and, Section 895.01 et seq., Florida Statutes (Florida RICO).

Respondents, Shearson and Bishop, alleged that Eassa's four general partners were educated, knowledgeable, sophisticated and experienced investors in stocks, bonds and commodities; denied any losses in the bond account; admitted employing a renegade broker, Swofford, who stole money, was caught by Shearson and punished by the authorities; admitted that Swofford misrepresented his ability to manage loss, his computer program, and the amount of loss; alleged that Shearson's confirmations and account statements contradicted Swofford's representations; and denied that Eassa justifiably relied on Swofford's misrepresentations. Shearson and Bishop asserted the affirmative defenses of contributory negligence; ratification; waiver and estoppel; failure to mitigate damages; and, statute of limitations.

RELIEF REQUESTED

Claimant requested damages of no less than \$321,173.80 for unauthorized losses, margin interest and tax free interest from September 1, 1984 to the date of the award; total commissions on unauthorized trades; profits generated for the "spread" on bonds plus interest; treble damages pursuant to the Civil Theft and RICO claims; punitive damages in the amount of \$10,000,000.00; attorney's fees and other relief.

Respondents, Shearson and Bishop, requested that Eassa's request for damages in excess of \$10,400,000.00 be denied.

Respondent, Swofford, failed to file an Answer, appear at the hearing or otherwise defend.

AWARD

On April 5, 6, 26 and 27, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on April 3, 1989, and by Respondent, Shearson, on April 6, 1990; and not signed by Swofford or Bishop as required by Sections 12(a) and 25 of the Code. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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 originals remain on file with the NASD, Inc.
2. Respondent, Shearson, is found liable and shall pay to Claimant the amount of Two Hundred Ninety Eight Thousand Two Hundred and 00/100 (\$298,200.00) Dollars, inclusive of interest.
3. Claimant's requests for attorney's fees, punitive damages and treble damages are hereby denied.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, Shearson, is hereby assessed forum fees in the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars (\$1,000.00 x eight sessions), of which it shall pay One Thousand and 00/100 (\$1,000.00) Dollars directly to Claimant, and Seven Thousand and 00/100 (\$7,000.00) Dollars to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimant for such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Pursuant to the bankruptcy petition (Arbitrator's Exhibit #2) filed by Respondent Bishop in Case Number 89-41925S, Bishop has been removed as a party to this matter.

The Panel finds that Swofford did not receive Service of the Claim or adequate notice of the hearing in this matter. Therefore, the Panel makes no finding regarding the liability of Swofford.

ARBITRATORS CONCURRING

Arthur J. Leibell Esq., Harry Polansky and Anthony S. Paetro Esq.

Received this 15th day of May 1990.