

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
SCOBEE COMBS FUNERAL HOME, INC.,)
) Claimant,)
) Case #89-01149
vs.) Award
)
SHEARSON LEHMAN HUTTON, INC.)
)
and DONALD FENTON,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Anthony J. Titone, Esq.
Harry Polansky
John O. Williamson

CASE SUMMARY

This claim was filed with the NASD, Inc. on April 17, 1989. The hearing was conducted in Fort Lauderdale, Florida on February 22 and 23 and March 27 and 29, 1990, with a total of seven sessions.

Claimant, Scobee Combs Funeral Home, Inc. ("Scobee"), alleged that Respondents, Shearson Lehman Hutton, Inc. f/k/a E. F. Hutton & Co., Inc. ("Shearson") and Donald Fenton ("Fenton"), made misrepresentations of material facts and omitted to state material facts; that Claimant granted discretionary authority to the Respondents; that Respondents effected unsuitable trades in options and equity securities, in light of Claimant's expressed investment objectives; churned the account; that Respondents' actions violated Section 10(b) of the Exchange Act; Section 12(2) of the Securities Act; Section 517.301, Florida Statutes; constituted breach of fiduciary duty; fraud and deceit; negligence; and, negligent supervision.

Respondents denied all allegations of wrongdoing and liability of any kind; alleged that the trades were suitable; that there were two separate accounts, one for security and one for more aggressive trading; that the pension fund account was profitable; that Claimant approved all trades; that any losses were due to market fluctuations; that Respondents acted at all times in accordance with all applicable rules and regulations; and, that the statutory claims are barred by the applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested damages in the amount of \$75,000.00, interest, costs, attorney's fees and punitive damages in the amount of \$100,000.00.

Respondents requested dismissal, costs and attorney's fees.

AWARD

On February 22 and 23 and March 27 and 29, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 14, 1989; by Respondent Shearson on July 24, 1989; and, by Respondent Fenton on February 22, 1990. 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, Fenton, is found not liable to the Claimant and, therefore, all claims against him are hereby dismissed.
3. Respondent, Shearson, is found liable and shall pay to Claimant the amount of Five Thousand Nine Hundred Sixty Eight and 00/100 (\$5,968.00) Dollars.
4. Claimant's requests for attorney's fees and punitive damages are hereby denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Five Thousand Two Hundred Fifty and 00/100 (\$5,250.00) Dollars (seven sessions x \$750.00). Claimant is hereby assessed forum fees in the amount of Two Thousand Six Hundred Twenty Five and 00/100 (\$2,625.00) Dollars, for which the NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee and the Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollar additional sessions deposit previously paid by the Claimant in full satisfaction thereof. Respondent, Shearson, is hereby assessed forum fees in the amount of Two Thousand Six Hundred Twenty Five and 00/100 (\$2,625.00) Dollars, of which it shall pay Three Hundred Seventy Five and 00/100 (\$375.00) Dollars directly to the Claimant and Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars to the National Association of Securities Dealers, Inc. The Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollar assessment against Shearson supercedes the Three Thousand and 00/100 (\$3,000.00) Dollar additional sessions deposit invoiced to Shearson and Fenton on February 23, 1990.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Anthony J. Titone Esq., Harry Polansky and John D. Williamson.

Received this 5th day of April 1990.