

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
RICHARD ROSEN and)
PAULINE ROSEN,)
)
) Claimants,)
) Case #89-01160
vs.) Award
)
SHEARSON LEHMAN HUTTON, INC.,)
JOSEPH HUNTING and RICHARD SOMMERS,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Robert Kasky, Esq.
Robert Herschmann, Esq.
Mr. Douglas Delaney Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on April 18, 1989. The hearing was conducted in Fort Lauderdale, Florida on April 24, 1990 with a total of two (2) sessions.

Claimants, Richard and Pauline Rosen ("the Rosens") alleged that Respondents, Shearson Lehman Hutton, Inc. ("Hutton"), Joseph Hunting ("Hunting") and Richard Sommers ("Sommers") were liable for: violations of Florida Statue Section 517.301; fraud; negligent safekeeping and investment of Claimant's assets; negligent supervision of Hunting and Sommers by Hutton; breach of fiduciary duty; and civil theft.

Specifically Claimants alleged that Respondent Hunting misrepresented the risks involved in, and the return on investment for, American Capital Government Security Fund and sold their holdings in said fund without Claimant's authorization and recommended an unsuitable insurance product. Claimants also alleged that Respondent Sommers recommended that Claimants purchase American Capital Pace Fund without advising of all the risks involved in said investment.

Respondents denied liability and alleged that Claimants: were informed of all the risks involved; agreed to the sale of the Government Security Fund; seek to recover for losses sustained due to unforeseeable market fluctuations and that Respondents acted in an ethical manner and in accordance with all exchange and governmental regulations.

RELIEF REQUESTED

Claimants requested damages in the amount of \$30,000 plus interest, punitive damages, treble damages, attorney's fees and other costs. Respondents requested dismissal of the claim.

AWARD

On April 24, 1990 the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on April 14, 1989, and by Respondents Hutton on July 26, 1989, Hunting on April 14, 1989 and Sommers on April 2, 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. Respondents, Hutton, Hunting and Sommers are not liable to Claimants and therefore the Claim against them is hereby dismissed.
3. Claimants' request for attorney's fees is hereby dismissed in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Claimants forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400.00 x 2 sessions). The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimants in partial satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Robert Kasky
Robert Herschmann
Douglas Delanoy Jr.

Dated: May 1, 1990