



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert & Jane Near

89-01430

Name of Respondent(s)

E.F. Hutton & Company, Inc.
Shearson Lehman Hutton, Inc.
Michael Alioto

REPRESENTATION

Claimants, Robert Near and Jayne Near were represented by: Lawrence S. Schultz, Esq., of Driggers, Schultz, Herbst & Paterson, P.C.

Respondents, Shearson Lehman Hutton, Inc. and Michael Alioto were represented by: Steve J. Weiss, Esq. of Hertz, Schram & Saretsky, P.C.

CASE INFORMATION

Statement of Claim filed: 5/15/89

Claimants' Submission Agreement signed on: 5/9/89

Respondent, Shearson Lehman Hutton, Inc.-Submission Agreement and Corporate Acknowledgment signed by William A. Hohauser on behalf of the firm on: 7/2/90

Respondent, Michael Alioto's Submission Agreement signed on: 7/13/90

HEARING INFORMATION

Hearing Date: 6/20/91-Two (2) Sessions.

Hearing Date: 6/21/91-One (1) Session.

Hearing Location: Southfield, MI

AWARD-#89-01430

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

CASE SUMMARY

Claimants, alleged that Respondent, Michael Alioto, ("Alioto"), misrepresented the risks involved prior to Claimants' purchase of \$74,367.00 of LTV Corporation and \$17,948.00 of McLean Industries ("McLean") bonds. Specifically, Claimants alleged that Respondent, Alioto, failed to disclose (I) the risks associated with the purchase of such bonds; (II) that such bonds were sold out of Respondent, Shearson Lehman Hutton, Inc.'s own account; (III) the commission incentive paid to sell such bonds; and (IV) that such bonds were unsuitable for Claimants. Claimants also alleged that Respondent, Alioto, improperly used a power of attorney to allow Respondent, Shearson Lehman Hutton, Inc. to dump its positions in LTV and McLean bonds. Claimants further alleged that Respondent, Shearson Lehman Hutton, Inc. engaged in a pattern of conduct to sell LTV and McLean bonds to persons for whom such bonds were unsuitable and that Respondent, Alioto, was paid a commission in excess of the normal commission as an inducement to sell such bonds.

Respondents maintained that Claimants were fully informed of the risks associated with purchasing LTV and McLean bonds and that such risks were consistent with Claimants stated investment objectives. Respondents also deny that Respondent, Shearson Lehman Hutton, Inc. engaged in a course of conduct to sell LTV and McLean bonds to persons for whom such purchases were unsuitable and that Respondent, Alioto was paid a commission in excess of the normal commission to sell such bonds.

RELIEF REQUESTED

Claimants requested damages of \$70,350.00 plus interest on \$91,152.00 at the rate of 10% per annum; a refund of their deposit with the NASD; \$7,500.00 in attorneys' fees and other costs, punitive damages and treble damages pursuant to RICO. Claimant subsequently withdrew their request for damages under RICO.

Respondents requested dismissal of the claim plus costs.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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).

1. All Claims of the Claimants against the Respondents, Shearson Lehman Hutton, Inc. and Michael Alioto, shall be and are hereby dismissed in all respects;

AWARD-#89-01430

2. The Parties shall each bear their respective costs including attorneys' fees;
3. Pursuant to Section 43 of the Code of Arbitration Procedure the NASD, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimants.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Respondents, Shearson Lehman Hutton, Inc. and Michael Alioto are hereby jointly and severally assessed forum fees in the amount of \$1,500.00- (3 sessions X \$750.00 = \$2,250.00 minus hearing session deposit of \$750.00 = net \$1,500 due).

ARBITRATION PANEL

ARBITRATORS CONCURRING

Name

/s/

Marvin I. Horowitz, Esq.
(PUBLIC/CHAIRMAN)

/s/

Richard L. Coskey
(INDUSTRY/PANELIST)

ARBITRATOR DISSENTING

William M. Ellman, Esq.
(PUBLIC/PANELIST)

DATED: July 29, 1991