

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Eva Strine, individually and )  
as co-trustee with Joseph Penza )  
of the Helen Strine Quinn Trust. )

Case No: 89-01455

Name of Respondent(s) )

Shearson Lehman Hutton, Inc. )  
C. Lynn Abel )

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.  
Judy Avey  
Richard M. Kowalske

Public  
Public  
Industry

REPRESENTATION

Claimants, Eva Strine and Joseph Penza, were represented by: Russell L. Forkey, Esq., of Forkey and Falco, Respondents, Shearson Lehman Hutton, Inc. and C. Lynn Abel, were represented by: Alex Sabo, Esq., of Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A.

CASE SUMMARY

This matter was initiated by a Statements of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 17, 1989 and March 8, 1990. Claimants, Eva Strine ("Strine"), individually and as co-trustee with Joseph Penza ("Penza"), of the Helen Strine Quinn Trust ("Trust"), alleged that Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and C. Lynn Abel ("Abel"), were liable in that, in exercising discretion over the purchase and sale of securities, including covered options, for Claimants' accounts, Respondents made certain false representations, misstatements, and omissions, made unsuitable purchases and churned the Trust Account. Claimants alleged that Respondents were liable for: violation of Federal Securities Laws, common law fraud, negligence, breach of fiduciary duties and negligent supervision.

In a Statement of Answer filed with the NASD, Inc. on August 2, 1989 and May 7, 1990, Respondents alleged that: the accounts were carefully monitored; Claimants had an extensive history of speculative trading; the trading

pattern was conservative and suitable; Respondents did not guarantee or insure the security of the accounts; and, Claimants never objected to any trade. Respondents asserted affirmative defenses of: failure to state a claim; ratification; waiver; estoppel; failure to mitigate damages; good faith; negligence on the part of Claimants; statutes of limitations; laches; and, that an award of punitive damages violates the Excessive Fine Clause, the Due Process Clause and, the Equal Protection Clause of the U.S. and Florida Constitutions.

#### RELIEF REQUESTED

Claimants requested damages in the amount of \$200,000.00 plus punitive damages, interest and costs.

Respondents requested dismissal of the claim plus costs.

#### AWARD

On April 4, 5, and May 8 and 10, 1991, in Fort Lauderdale, Florida, during a hearing lasting eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, Strine and Penza, on February 26, 1990, and signed by William Hohauser on behalf of Respondent, Shearson, on April 24, 1990 and by Respondent, Abel, on May 3, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 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.
2. Respondents, Shearson and Abel, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimants' requests for costs and punitive damages are denied.
4. Respondents' request for costs is denied.

#### FORUM FEES

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$9,200.00, (8 sessions x \$1,150 per session). Claimant, Strine, is hereby assessed \$4,600.00 and Penza, is hereby assessed \$4,600.00. The NASD shall retain the \$1,400.00 previously deposited by Claimants in partial satisfaction of such forum fees.

6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

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Casey W. Mills, Esq.

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Judy Avey

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Richard M. Kowalske

Date of Decision: May 24, 1991