

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of Arbitration Between

Douglas B. McAdams

Claimant

vs.

Shearson Lehman Hutton, Inc.

Theodore C. Tanski

Respondents

=====

CASE #89-01534

AWARD

CASE SUMMARY

Claimant, Douglas B. McAdams alleges that he informed Shearson Lehman Hutton, Inc. and Theodore C. Tanski, that his investment objective was a conservative investment geared towards preservation of capital with a view for a return of approximately three percent over the cost of living index. Claimant alleges that Respondents gave him erroneous advise to convert his portfolio from "Triple Tax Free Municipal Bonds" to cash and made unsuitable recommendations that Claimant invest in futures. Claimant further alleges that Respondents exceeded their trading authority with respect to the amount; that Respondents' failure to provide him with a consolidated statement was done in order to confuse Claimant and conceal the actual account balances. Among other things, Claimant alleges that Respondents breached their fiduciary duty, were negligent and committed fraud upon him.

Respondent, Shearson Lehman Hutton, Inc., denies the allegations of wrongdoing and alleges that the level of trading in Claimant's accounts was consistent with his objective and experience and was approved by him.

Respondent, Theodore C. Tanski, denies the allegations.

RELIEF REQUESTED

Claimant, requests that the panel award him \$49,756.34, plus treble damages, punitive damages, interest, costs and attorney's fees. Respondent, Shearson Lehman Hutton, Inc., requests that the Statement of Claim be dismissed, or, alternatively, that the arbitration enter an award in its favor and against Claimant, with all costs expenses and attorney's fees taxed to Claimant. Respondent, Theodore C. Tanski, requests that the panel dismiss the claim and award him attorney's fees.

AWARD

On February 6, 1990 and March 9, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant, on May 15, 1989 and by the Respondents Shearson Lehman Hutton, Inc. and Theodore C. Tanski on August 15, 1989 and July 24, 1989, respectively. The hearing was held in Pittsburgh, P.A. and consisted of four sessions. 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. Respondent Theodore C. Tanski Motion to Dismiss is denied.
2. Respondent Theodore C. Tanski is hereby liable to the Claimant in the amount of Twenty-Four Thousand, Eight Hundred and Seventy-Eight Dollars and Seventeen Cents (\$24,878.17).
3. The claim for treble damages is denied.
4. The claim for punitive damages is denied.
5. No interest is awarded on the above sum.
6. The parties shall each bear their respective costs, including attorneys' fees.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited by the Claimant. Claimant is further assessed \$250.00 in forum costs.
8. Respondent Shearson Lehman Hutton, Inc. is assessed forum fees in the amount of \$750.00 and Respondent Tanski is assessed forum fees in the amount of \$1500.00. Costs are to be made payable to the National Association of Securities Dealers, Inc. in accordance with Section 43 of the Code of Arbitration Procedure.

OTHER ISSUES

At the hearing, the Claimant and Shearson entered into a settlement agreement on the record. Respondent, Tanski, moved to dismiss the claims asserted against him on the theory since he was in a master-servant relationship with Shearson, under New York law a settlement between Claimant and Shearson disposes of the issues of the case.

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CONCURRING ARBITRATOR

/s/
Charles Bloom

/s/
Harry Gerhard

/s/
Gary Lee Hogan

Dated: May 11, 1990