

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Arthur Davis, Jr.

89-01589

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Mark W. Bailey

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on May 31, 1989. Claimant alleged that Respondents engaged in wrongful conduct including negligence, unsuitability of investments, failure to disclose pertinent information, failure to appraise themselves of information pertinent to the Claimant, and violation of certain stock exchange rules and/or standards and/or protocols. In addition, Claimant alleged that Shearson negligently failed to train and/or supervise the conduct of Respondent Bailey. Said alleged wrongful conduct was in connection with the purchase of stocks and the establishment of a margin account. Respondents alleged that Claimant told Respondents that he was an aggressive investor, willing to take risks in order to maximize both income and growth in his investments, that Claimant was appraised of the status of his account, that every transaction was discussed and authorized by Mr. Davis and that Mr. Davis received confirmation statements of each transaction. Respondents alleged that whatever losses Mr. Davis may have sustained were a direct result of market forces, Mr. Davis' heavy borrowing, and Mr. Davis' own high-risk, high-growth strategy. Respondents alleged affirmative defenses of good faith and reasonable care; ratification, waiver and estoppel; and mitigation of damages.

DAMAGES AND RELIEF REQUESTED

Claimant requested an award of damages of \$42,980.96, and attorneys' fees. Respondents requested that the claim be dismissed.

DAMAGES AND RELIEF AWARDED

On September 18, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant in May, 1989, by Respondent Shearson Lehman Hutton on July 21, 1989, and by Respondent Bailey on July 31, 1989.

The hearing was conducted in Seattle, Washington and lasted two 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. Respondents are liable for and shall pay to Claimant the sum of Fifteen Thousand Four Hundred Seventy-Six Dollars and Sixty-Four Cents (\$15,476.64). Said liability is joint and several.
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant [as an assessment of forum fees by the arbitrators]. Respondents are jointly and severally liable for reimbursing Claimant said \$500.00 filing fee. In addition, Claimant is also assessed fees of \$250.00, for forum fees, and Respondents are jointly and severally assessed fees of \$250.00 representing forum fees.

OTHER ISSUES

Respondents requested that they be reimbursed their \$500.00 costs in connection with the postponement of the hearing. Said request is denied.

Arbitrator(s) Signature



Richard E. Jonson