

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Diane Kemker

CASE #89-02118

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
Frank E. Cooper III  
Frank Powers, Jr. and  
Donald Law

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Heard before the members of the Arbitration Panel:

George Felos, Esq.  
William G. Kline  
Randall T. Stack

Public  
Public  
Industry

REPRESENTATION

Claimant, Diane Kemker ("Kemker"), was represented by William L. Lyman, Esq. of William L. Lyman, P.A. Respondents, Shearson Lehman Hutton, Inc. ("Shearson"), Frank Cooper, III ("Cooper"), Frank Powers, Jr. ("Powers") and Donald Law ("Law"), were represented by William J. Schifino, Jr., Esq. of Taub & Williams, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 28, 1989. Claimant alleged that Respondents were liable for: violating the Florida Security and Investor Protection Act, Sections 517.301 and 517.211 of the Florida Statutes; common law fraud; intentional breach of fiduciary duty; negligence; violations of Sections 772.011, 812.012, 812.014 and Chapter 895 of the Florida Statutes, the Florida RICO Act.

Claimant alleged that Respondents sold limited partnerships to her that were inconsistent with her stated investment objectives and misrepresented the safety, liquidity, and expected return on the investments among other things.

Respondents denied liability and asserted the affirmative defenses of: failure to state a claim; estoppel; waiver; Claimant's negligence; failure to mitigate damages; ratification; lack of reliance upon the statements or omissions alleged to have been made; lack of proximate cause; any damages suffered were beyond Respondent's control; good faith; consent; Claimant's request for punitive damages violates the U.S. and Florida Constitutions; and the Racketeer Influenced and Corrupt Organizations Act is unconstitutionally vague.

#### RELIEF REQUESTED

Claimant requested rescission and/or unspecified damages plus attorney's fees pursuant to Section 517.211 of the Florida Statutes, costs, interest, treble damages and other punitive damages.

Respondents requested dismissal of the claim plus costs and attorney's fees.

#### AWARD

On October 15 & 16, 1990 and May 16 & 17, 1991, in Tampa, Florida, during a hearing lasting seven (7) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 12, 1989 and signed on October 12, 1989 by Joseph Del Duca on behalf of Respondent, Shearson and by Respondents, Law on October 12, 1989, Powers and Cooper on October 10, 1989.

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 original(s) remain on file with the NASD.
2. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant is found liable and shall pay to the Respondents the total amount of \$10,000 for attorney's fees pursuant to Section 517.211, Florida Statutes and pursuant to the Panel's authority under the Federal Arbitration Act and the case law interpreting that act.
4. Claimant's request for attorney's fees and punitive damages is denied.

FORUM FEES

5. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,250 (7 sessions x \$750 per session). Claimant is hereby assessed \$5,250 for which the NASD shall retain the \$750 previously deposited in partial satisfaction thereof.

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

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

OTHER ISSUES

7. None.

Concurring Arbitrators' Signatures

/s/  
George Felos, Esq.

/s/  
William G. Kline

/s/  
Randall T. Stack

Date of Decision: 6-6-91