

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	)	
<u>Name of Claimant(s)</u>	)	
Arviv Corp.	)	
	)	
<u>Name of Respondent(s)</u>	)	Case No. 89-02215
Shearson Lehman Hutton, Inc.	)	
John Potesta	)	
	)	
	)	
	)	
	)	

Heard before the members of the Arbitration Panel):

Robert Herschmann, Esq.  
Richard M. Kowalske  
Frank J. McCormack

CASE SUMMARY

This claim was filed with the National Association of Securities, Inc. (NASD) on August 7, 1989. The hearing was conducted in Fort Lauderdale, Florida on August 7, August 8 and November 26, 1990, with two (2) prehearing conferences on July 12 and August 2, 1990 for a total of nine (9) sessions.

Claimant, Arviv Corp. ("Arviv"), alleged that Respondents, Shearson Lehman Hutton Inc., ("Shearson") and John Potesta ("Potesta"), were liable for violating Florida Statutes Sections 517.301, 517.12 and 517.211; breach of fiduciary duty; and, that Shearson is also liable for negligent supervision.

Claimant alleged that Respondents, through misrepresentations and omissions, induced Claimant into allowing excessive and speculative options trading to occur in Claimant's account which Respondents knew or should have known was inconsistent with Claimant's investment objectives; aided and abetted, or conspired with, Robert Orange ("Orange") and Innovest Asset Management ("Innovest") in perpetrating a fraud upon Claimant; and knew or should have known that Orange and Innovest were not registered investment advisors.

Respondents alleged that: Claimant granted Orange and Innovest discretion to effectuate trades in Claimant's account and, pursuant to that agreement, Potesta would not become involved in any investment decisions; Claimant never expressed any dissatisfaction to Respondents; the trading was consistent with Claimant's investment objectives; Claimant's principal officer, director and shareholder was an experienced investor; and that any losses are the result of Orange and Innovest's investment decisions and market conditions, and not of any misconduct on the part of Respondents.

Respondents counterclaimed against Claimant for indemnification and contribution. Claimant answered the Counterclaim and alleged that Respondents cannot seek contribution and indemnification against Claimant since such claims for indemnification and contribution for violations of securities laws do not exist as a matter of law.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$122,000.00 plus interest, punitive damages in the amount of \$366,000.00, costs, and attorney's fees.

Respondents requested dismissal of the claim plus costs, and attorney's fees and counterclaimed for indemnification or contribution.

#### AWARD

On July 12, August 2, August 7, August 8, and November 26, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on July 27, 1989, and by Respondents Shearson on March 1, 1990, and Potesta on July 2, 1990. 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the National Association of Securities Dealers, Inc.

2. Respondent, Shearson and Potesta, are found liable, jointly and severally, and shall pay to the Claimant the amount of Nine Thousand Six Hundred Eighty Eight and 18/100 (\$9,688.18) Dollars, plus interest at the legal rate of 12% per annum (from June 8, 1989 to December 3, 1990) in the amount of One Thousand Seven Hundred Eighty Five 20/100 (\$1,785.20) Dollars, for a total due to the Claimant of Eleven Thousand Four Hundred Seventy Three 38/100 (\$11,473.38) Dollars.

3. Claimant/Counter Respondent is found not liable to Respondent/CounterClaimant and, therefore, the counterclaim against it is hereby dismissed.

4. Claimant's requests for attorney's fees, costs, and punitive damages are denied.

5. Respondents' requests for attorney's fees and costs are denied.

6. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Six Thousand Three Hundred and 00/100 (\$6,300.00) Dollars (seven sessions x \$750.00 per session plus \$750.00 for the prehearing conference on August 2, 1990 with the full Panel plus \$300.00 Dollars for the prehearing conference on July 12, 1990 with a single arbitrator). Claimant is hereby assessed Seven Hundred Fifty and 00/100 (\$750.00) Dollars, for which the NASD shall retain the Five Hundred Fifty and 00/100 (\$550.00) Dollars previously deposited in partial satisfaction thereof, \$200.00 Dollars of the initial Seven Hundred Fifty and 00/100 (\$750.00) Dollars paid by the Claimant having been charged as the \$200.00 Dollar non-refundable filing fee. Respondents, Shearson and Potesta, are hereby assessed Five Thousand Five Hundred Fifty and 00/100 (\$5,550.00) Dollars, jointly and severally, payable to the National Association of Securities Dealers, Inc. The National Association of Securities Dealers, Inc. shall retain the Two Hundred Fifty and 00/100 (\$250.00) Dollars previously deposited by the Respondents in partial satisfaction thereof, \$500.00 Dollars of the initial Seven Hundred Fifty and 00/100 (\$750.00) Dollars paid by the Respondents having been charged as the \$500.00 non-refundable filing fee.

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

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

/s/  
Robert Herschmann, Esq.

/s/  
Richard M. Kowalske

/s/  
Frank J. McCormack

Dated: December 12, 1990