

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ronald J. Mundigel and
Dorothy W. Mundigel

89-02230

Name of Respondent(s)

Lewis Carns, Roy L. Harkins and
Shearson Lehman Hutton, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about August 7, 1989, Ronald J. and Dorothy W. Mundigel ("Claimants") alleged that Lewis Carns, Roy L. Harkins and Shearson Lehman Hutton, Inc. (collectively as "Respondents") engaged in unauthorized transactions and improper margin calls. Claimants specifically alleged that Respondents made unauthorized transactions in stock options and index options during the week of October 19, 1987. Claimants further alleged that Respondents made improper margin calls.

In their joint Answer filed with the NASD on or about October 10, 1989, Respondents denied that they engaged in unauthorized transactions or made improper margin calls. Respondents specifically stated that Claimants authorized all trading that occurred in their account and that the margin calls in their account were proper and occurred when the equity in their account fell below the levels required by the internal policies of Shearson Lehman Hutton, Inc. Respondents also asserted the following affirmative defenses: the claimants failed to state a claim upon which relief can be granted; there is no causal relationship with the damages alleged and any act of Respondents; failure to mitigate, assumption of the risk; waiver and that the claims are time barred.

PROCEDURAL MATTER

The parties agreed to the execution of a handwritten award or counterpart signatures and the receipt of a typed conformed copy of the award with the originals on file with the NASD.

RELIEF REQUESTED

Claimant requested an award in the amount of \$250,000.00 in compensatory

damages and punitive damages.

Respondents requested that the Statement of Claim be dismissed.

AWARD

On Wednesday, November 14, 1990 and Thursday, November 15, 1990 in Phoenix, Arizona and Tuesday, December 11, 1990 and Wednesday, December 12, 1990 in Scottsdale, Arizona during a hearing lasting a total of eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 20, 1989 by Claimants Ronald J. and Dorothy W. Mundigel and by Edward A. Smith, Esq. on behalf of Respondent Shearson Lehman Hutton, Inc. Respondents Lewis Carns and Roy L. Harkins did not submit to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim and appearing at the hearing are bound by the determination of the arbitrators on all issues submitted.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter not specifically enumerated herein;
3. The postponement fee of \$750.00 shall be and hereby is waived; and
4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$550.00 previously deposited with the NASD by the Claimants. Respondent Shearson Lehman Hutton, Inc. shall pay to the NASD the sum of \$5,450.00 as forum fees.

By the Panel

Dated: December 12, 1990 /S/ Robert Williams, Esq.
Presiding Arbitrator

Dated: December 12, 1990 /S/ Peter Kay
Industry Arbitrator

Dated: December 12, 1990 /S/ James Knaller