

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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| In the Matter of the Arbitration Between |) | |
| David L. Diefenbaugh and |) | |
| Diana Diefenbaugh |) | AWARD |
| Claimants |) | |
| vs. |) | NASD NO. 89-02236 |
| E. F. Hutton & Co., Inc. and |) | |
| James Kenney |) | |
| Respondents |) | |

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 8, 1989. Claimants alleged that Respondents misrepresented the risks involved in options trading, engaged in unauthorized trading after being instructed in August, 1987 to cease all activity when claimants revoked the limited discretionary trading authority, breached their fiduciary duties, violated NASD Rules of Fair Practice, and churned their account.

Respondents denied the allegations and maintained that the risks of options trading were fully discussed in Respondents' options seminar attended by Claimants and disclosed in various risk disclosure brochures and documents, that Claimants' revocation of the discretionary authorization occurred in November 1987 and was complied with immediately, and that they did not breach any fiduciary duties owed to Claimants nor violate any industry rules or regulations. Respondents further maintained that there was no evidence of churning as the trading was not excessive in light of Claimants' stated investment objective of speculation, and that claimants were given a twenty-five percent commission discount.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages, as amended at the hearing, of \$42,296.71 plus interest from March 1988.

Respondents requested dismissal of the claims and an assessment of costs against Claimants.

DAMAGES AND RELIEF AWARDED

On July 18 and 19, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on July 21, 1989 and by Respondents Shearson Lehman Hutton, Inc. on November 15, 1989 and James Kenny on July 18, 1990. The hearing was conducted in Los Angeles, California and lasted three 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. All claims are dismissed.
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: a) the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant; and
b) Respondents are jointly and severally assessed forum fees in the amount of \$1,000.00 to be paid to the NASD directly.

OTHER ISSUES

The parties stipulated to the execution and service of the Award in counterpart copies.

ARBITRATORS CONCURRING

DATE SERVED: 09/10/90

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John B. Wells