

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Robert T. and Mary Ann Ruff and
Northwest Bay Trust

Claimants

and

89-02566

Shearson Lehman Hutton, Inc. and
Respondent

and

Mark Rehms

Third Party Respondent

REPRESENTATION OF PARTIES

Claimant Robert T. Ruff, Esq. appeared pro se and representing Claimants Mary Ann Ruff and Northwest Bay Trust. Respondent Shearson Lehman Hutton was represented by Harry Walters, Esq. of Shearson Lehman Hutton, Inc., New York, New York. Respondent Mark Rehms was represented by Thomas Flemming, Esq. of Jones Bell Simpson & Abbott, Los Angeles, California.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about September 14, 1989 Claimants Robert T. Ruff, Mary Ann Ruff and Northwest Bay Trust alleged causes of action against Respondent Shearson Lehman Hutton, Inc. ("Shearson") as follows: negligence, gross negligence, breach of fiduciary duty, fraud and violation of Section 10b of the Securities Exchange Act of 1934. Claimants alleged that Mark T. Rehms ("Rehms") contacted Claimants to invest in GNMA Securities bearing "guaranteed" interest rates of 15% to 17% as a premium above par with a rate to maturity of 12% or higher. Claimant alleged that Ruff engaged in unauthorized margin trading of which Claimants complained Rehms allegedly told Claimant that these were clerical and operating errors which would be corrected and Rehms also told Claimants that the account statements reflecting the alleged unauthorized trades were in error.

In a Statement of Answer filed with the NASD on or about December 26, 1989, Shearson denied the allegations of the claim and stated as an affirmative defense that Claimant, an attorney received monthly statements and confirmations for his accounts. Accordingly, Shearson alleged that Claimant was estopped from seeking damages due to ratification of the trading and that Claimants failed to mitigate any damages.

Shearson alleged a Third Party Claim against Rehms and asserted that to the extent Shearson was held liable if at all for the conduct of Rehms, Shearson was entitled to be indemnified by Rehms.

In a Statement of Answer filed with the NASD on or about November 13, 1990, Rehms denied the allegation that he engaged in unauthorized trading for Claimant's account. Rehms counterclaimed against Shearson for attorney's fees.

RELIEF REQUESTED

Claimants requested compensatory damages totaling \$212,922.00, costs of the action, return of the \$1000 filing fee and punitive damages of \$3,000,000.00. Shearson requested dismissal of the claim, and indemnification from Rehms. Rehms requested dismissal of Shearson's third-party claim and counterclaimed for his attorney's fees of at least \$10,000 from Shearson. Shearson requested dismissal of the counterclaim.

OTHER ISSUES

The panel considered certain procedural motions at the hearing on January 28, 1991. The claimants had filed a motion to deny Shearson the right to defend the claim pursuant to a late filing in violation of Section 25 of the NASD Code of Arbitration Procedure ("Code") and to default Shearson because documents were not exchanged in accordance with Section 32c of the Code. The panel also heard Shearson's motion to dismiss the claim.

The panel denied all motions after hearing arguments.

PROCEDURAL MATTERS

On January 28, January 29, June 4, and June 5, 1991, in Chicago, Illinois during a hearing lasting a total of nine (9) sessions, and in two pre-hearing conferences each lasting one session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration

signed on September 8, 1989 by Claimants Robert Ruff, Mary Ann Ruff and Robert Ruff on behalf of Northwest Bay Trust, and on August 29, 1990 by Harry T. Walters on behalf of Respondent Shearson Lehman Hutton, Inc.

Respondent Rehms did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original (s) remain on file with the NASD.

AWARD

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. Respondent Shearson Lehman Hutton, Inc. is liable for and shall pay to Claimants Robert T. Ruff and Mary Ann Ruff, jointly, the sum of \$28,640.00 as damages.
2. Respondent Shearson Lehman Hutton, Inc. is liable for and shall pay to Claimant Northwest Bay Trust the sum of \$136,100.00 as damages.
3. Third-party Respondent Mark Rehms is liable for and shall pay to Third-Party Claimant Shearson Lehman Hutton, Inc. the sum of \$82,870.00 as damages on Shearson's Third-Party Complaint.
4. The parties shall each bear their own costs, including attorneys' fees, except for those specifically enumerated herein.
5. Shearson is liable for and shall pay to Third-party counter claimant Rehms the sum of \$15,000.00 for attorneys' fees.

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 \$ 1000.00 previously deposited with the NASD by the Claimant Robert Ruff. Shearson is assessed and shall pay to the NASD additional forum fees in the amount of \$10,000.00.

Dated:

Panel Members Concurring

8-1-91


John W. Jerek
Presiding Chair
Public Arbitrator

Thomas McKay, Jr.
Public Arbitrator

Mark B. Horin
Industry Arbitrator

Date Served: 8.15-91

89-2566

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Industry Arbitrator

July 10 1991
Date Served: 8.15.91