

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between: :
: :
ETHELYN TYSON ROSE, Individually, :
as Administratrix CTA of the Estate of :
HARRIETTE T. ANDREAE, Deceased, and as :
Custodian for KIPP D. CLARK, A Minor, :
Under the Uniform Gifts to Minors Act :
of New Jersey and SUSAN R. CLARK as : AWARD
Custodian for Kipp D. Clark, a minor under : #89-02580
the Uniform Gifts to Minors Act of :
New Jersey :
: :
CLAIMANTS :
V. :
SHEARSON LEHMAN HUTTON, INC. :
AND JOHN BURNS :
RESPONDENTS :

CASE SUMMARY

The Statement of Claim was filed on September 15, 1989.

Claimants alleged that they were totally unsophisticated investors when Respondent, John Burns, an account executive at Respondent, Shearson Lehman Hutton, Inc., acting upon his own discretion and/or forged documents, caused unauthorized, unwarranted and unnecessary margin accounts to be opened in Claimants' account at Shearson Lehman Hutton, Inc.; made and/or instructed to be made purchases of unauthorized, unwarranted and unsuitable investments in limited partnerships in each of Claimants' accounts and made and or instructed to be made purchases and sale of other unauthorized unwarranted and unsuitable investments so that he could generate excessive commissions and fees for himself and his employer, Shearson Lehman Hutton, Inc. Claimants further alleged that Respondent, John Burns misrepresented investments and that Shearson Lehman Hutton and John Burns, breached their fiduciary duty to Claimants causing Claimants substantial losses in their accounts.

Respondents categorically denied that they mishandled Claimants' accounts or breached any duties owed to Claimants and submitted that all of the investments recommended to Claimants and made by Claimants were thoroughly discussed with Claimants in advance and were deemed suitable given their expressed investment objectives and needs at the time they were made. Mr Burns also denied that he forged or caused to be forged Claimant's (Ethelyn Tyson Rose) signature in order to purchase any of the investments. Respondents also maintained that there were substantial gains made in Claimants' accounts as a results of those investments.

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RELIEF REQUESTED

Claimants' requested an award as follows: for Ethelyn Tyson Rose, individually-\$319,000.00; for Ethelyn Tyson Rose, as Administratrix CTA of the Estate of Harriette T. Andreae, deceased-\$162,000.00; for Ethelyn Tyson Rose, as Custodian for Kipp D. Clark, a minor-\$7,500.00; for Susan R. Clark, as Custodian for Kipp D. Clark-\$36,000.00. In addition Claimants requested an additional award of Punitive Damages, Treble Damages and an award compelling Respondent, Shearson Lehman Hutton, Inc. to repurchase all investments from Claimants.

AWARD

On September 17th and 18th, 1990, November 8th and 9th, 1990, November 15th and 16th, 1990 and December 10th and 11th, 1990, the undersigned arbitrators heard the controversy between the Parties as set forth in submissions to arbitration signed by the Claimant, Ethelyn Tyson Rose on September 12, 1989, by Ethelyn Tyson Rose, as Administrative CTA of the Estate of Harriette T. Andreae, deceased on September 12, 1989, by Susan R. Clark as Custodian for Kipp D. Clark, a minor on September 12, 1989, by Respondent Shearson Lehman Hutton on September 17, 1990 and by Respondent, John Burns on September 17, 1990. The hearing was held in New York City and consisted of sixteen (16) 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. Claimant, Susan Clark, as Custodian for Kipp D. Clark, shall transfer all limited partnerships to Respondent, Shearson Lehman Hutton, Inc. and Respondent, Shearson Lehman Hutton, Inc., shall credit Account #681-05971 with the sum of Twenty Three Thousand Four Hundred Thirty Nine Dollars and No Cents (\$23,439.00);
2. Claimant Ethelyn Tyson Rose, shall transfer all limited partnerships to Respondent, Shearson Lehman Hutton Inc. and Respondent, Shearson Lehman Hutton, Inc., shall credit the account of Ethelyn Tyson Rose, #681-16351 with One Hundred Five Thousand One Hundred Ninety One Dollars and No Cents (\$105,191.00);

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3. Claimant, Ethelyn Tyson Rose, as Administratrix of the Estate of Harriette T. Andreae, shall transfer all limited partnerships to Respondent, Shearson Lehman Hutton, Inc., and Respondent, Shearson Lehman Hutton, Inc., shall credit the account of Ethelyn Tyson Rose, Administratrix of the Estate of Harriette T. Andreae, #681-16352 with the sum of Sixty Seven Thousand Seven Hundred Forty Five Dollars and No Cents (\$67,745.00);

4. Claimant, Ethelyn Tyson Rose, individually, shall transfer all limited partnerships to Respondent, Shearson Lehman Hutton, Inc. and Respondent, Shearson Lehman Hutton, Inc., shall credit the account of Ethelyn Tyson Rose, individually, #681-16490 with the sum of Fifty Thousand Five Hundred Ninety Five Dollars and No Cents (\$50,595.00);

5. Claimant, Ethelyn Tyson Rose, as Administratrix for Harriette T. Andreae, deceased, shall transfer all limited partnerships to Respondent, Shearson Lehman Hutton, Inc. and Respondent, Shearson Lehman Hutton, Inc., shall credit the account of Ethelyn Tyson Rose, Administratrix for Harriette T. Andreae, deceased, #681-16491 with the sum of Thirty Three Thousand One Hundred Fifty Eight Dollars and No Cents (\$33,158.00);

6. Claimant, Ethelyn Tyson Rose, as Custodian for Kipp D. Clark, shall transfer all limited partnerships to Respondent, Shearson Lehman Hutton, Inc. and Respondent, Shearson Lehman Hutton, Inc. shall credit the account of Ethelyn Tyson Rose, Custodian for Kipp D. Clark, #681-18228 with the sum of Five thousand Seven Hundred Seventeen Dollars and No Cents (\$5,717.00);

7. Claimants' Claim for Punitive Damages shall be and hereby is dismissed in all respects;

8. All remaining Claims by all Parties shall be and hereby are dismissed except that Respondent, Shearson Lehman Hutton, Inc. shall have the right to be reimbursed by Respondent, John Burns;

9. The Parties shall each bear their respective costs including attorneys' fees;

10. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$1,000.00 filing fee previously deposited by Claimants;

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11. Respondent, Shearson Lehman Hutton, Inc. is hereby assessed forum fees in the amount of \$15,000.00 payable to the NASD, Inc. through its staff administrator in accordance with Section 43 of the Code of Arbitration Procedure.

ARBITRATORS CONCURRING

/s/

ALLEN KILIK (Public-Chairman)

/s/

ANDREW BRODSKY (Public-Panelist)

/s/

LOUIS GREEN (Industry-Panelist)

DATED BY NASD
FEBRUARY 7, 1991