

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

KJB Enterprises, Katherine M. Barzen,
John C. Barzen, John A. Barzen,
Timothy J. Barzen, Mimi Barzen
and Norwest Bank, formerly known as
the Northwestern National Bank,
as Trustee for the Josephine M. Maroney Trust
and Timothy J. Maroney Trust

89-02880

Name of Respondents

Shearson Lehman Hutton, Inc., as successor
in interest to the E. F. Hutton Group, Hutton
Equipment Management, Inc., and E. F. Hutton & Company, Inc.;
and PaineWebber, Jackson and Curtis

REPRESENTATION

For Claimants: Lawrence Galber, Esq. of Beigel & Sandler, New York, New York.

For Respondent Shearson Lehman Hutton, Inc.: J. David Jackson of Dorsey & Whitney, Minneapolis, Minnesota.

For Respondent PaineWebber, Inc.: Robert Rums III of PaineWebber, Inc.,
Weehawken, New Jersey.

CASE INFORMATION

Statement of Claim filed by all of the Claimants on October 18, 1989.

Claimants Katherine M. Barzen, John C. Barzen, and KJB Enterprises's
Submission Agreement signed on: November 7, 1989. Timothy J. Barzen's
Submission Agreement signed on: November 7, 1989. Claimant Mimi Barzen's
Submission Agreement signed on: November 2, 1989. Claimant John A. Barzen's
Submission Agreement signed on: November 17, 1989. Claimant Norwest Bank's,
formerly known as the Northwestern National Bank, as Trustee for the
Josephine M. Maroney Trust and Timothy J. Maroney Trust, Submission
Agreement signed on: November 28, 1989.

Statement of Answer filed by Respondent Shearson Lehman Hutton, Inc. as
successor in interest to the E. F. Hutton Group, Hutton Equipment Management,
Inc. and E. F. Hutton & Company, Inc. on: February 28, 1990.

Statement of Answer and Motion To Dismiss filed by Respondent PaineWebber
Jackson and Curtis (hereinafter "PaineWebber") on: February 15, 1990.

Response to Respondent PaineWebber's Motion To Dismiss filed by all of the Claimants about: April 13, 1990.

Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed on: February 28, 1990. Respondent PaineWebber's Submission Agreement signed on: February 13, 1990.

HEARING INFORMATION

Hearing Dates/Sessions: April 30, 1992 for two (2) sessions,
May 1, 1992 for three (3) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants KJB Enterprises, Katherine Barzen, John C. Barzen, John A. Barzen, Timothy Barzen, Mind Barzen, and Norwest Bank, as Trustees for the Josephine Maroney Trust and Timothy Maroney Trust (collectively "Claimants") alleged that Respondents Shearson Lehman Hutton, Inc., as successor in interest to the E. F. Hutton Group, Hutton Equipment Management, Inc., and E. F. Hutton & Company, Inc. (hereinafter "Shearson") and PaineWebber (collectively "Respondents") misrepresented to the Claimants that the limited partnerships which Claimants invested in were sound economic investments, extremely conservative and safe, and met the Claimants stated investment objectives. The investments which PaineWebber recommended were American Real Estate Partners Limited Partnership and American Royalty Trust. The investments which E. F. Hutton recommended were Hutton Asset Recovery Fund and Indian/Wells 1983 Energy Income Fund Limited Partnership. Claimants further alleged that the Respondents knew or should have known that the said investments were illiquid and highly speculative and would involve a high risk to the Claimant's capital.

Respondent PaineWebber, along with their Answer, filed a Motion To Dismiss pursuant to Section 15 of the Code of Arbitration Procedure. In their Answer, PaineWebber alleged that Claimants were mature, well-informed, experienced and sophisticated investors. PaineWebber further alleged that the investments were accurately described and completely suitable. Claimants filed a Response to the Motion To Dismiss requesting that the motion be denied and that their claim is eligible for arbitration.

Respondent Shearson Lehman Hutton, Inc., sued as E.F. Hutton, alleged that all trades entered into were suitable and in accordance with the Claimant's stated investment objectives. Shearson further alleged that at no time were any misrepresentations made to the Claimants.

RELIEF REQUESTED

Claimants requested that they be awarded the total sum of their investments plus damages equivalent to the lost use of the money invested, other consequential damages, attorney's fees, and reimbursement for the costs of this claim.

Respondents PaineWebber requested that the claim be dismissed in its entirety and that the costs of the proceedings be assessed against the Claimants. Respondent Shearson Lehman Hutton requested that the Claimant's Statement of Claim be dismissed and that Shearson be awarded costs and attorney's fees incurred in the matter.

OTHER ISSUES CONSIDERED & DECIDED

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 NASD.

The Claimants dismissed Respondent PaineWebber, Inc. as a party to the arbitration prior to the hearing.

Counsel for Respondent Shearson Lehman Hutton, Inc. asserted a Motion To Dismiss based on the Claimants late production of documents. The panel denied the motion. Counsel for Respondent Shearson Lehman Hutton, Inc. asserted a Motion To Waive Their Opening Statement. The panel denied the motion. Counsel for Respondent Shearson Lehman Hutton, Inc. asserted a Motion To Dismiss or for a Directed Verdict after the Claimants presented their case. The Panel denied the motion.

Counsel for Claimants asserted a Motion To Amend the Pleadings after the presentation of their case to include: breach of fiduciary duty and failure to comply with the NASD and NYSE rules. The Panel denied the motion. Counsel for the Claimants requested to Amend The Claim to include Hutton/Energy Assets, an investment recommended by Hutton. The Panel denied the request. Counsel for Claimants requested to Amend the Claim to include an investment made in Permian & Partners Limited Partnership which was recommended by Hutton and its successor Shearson. The Panel denied the request.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant's Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions X \$750 = \$3750 minus hearing session deposit of \$550 = net \$3200 due.

Forum fees Assessed Against: Claimants, jointly and severally, in the amount of \$1325 and against Respondents, jointly and severally, in the amount of \$1875.

Fees are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq.
Cassandra Mihalchick, Esq., Chairperson
Public Arbitrator

6-22-92

James H. Colburn
Public Arbitrator

John Robert Kelly
Industry Arbitrator

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Fees are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq., Chairperson
Public Arbitrator 929-2900

James H. Colburn
Public Arbitrator

John Robert Kelly
Industry Arbitrator

21 June 1993

Forum fees Assessed Against: Claimants, jointly and severally, in the amount of \$1325 and against Respondents, jointly and severally, in the amount of \$1875.

Fees are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq., Chairperson
Public Arbitrator

James H. Colburn
James H. Colburn
Public Arbitrator

June 23, 1992

John Robert Kelly
Industry Arbitrator

Dated: 6/30/92