

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Alan & Shawn Epstein

89-02915

Name of Respondent(s)

E.F. Hutton Company/Shearson Lehman Bros

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CASE SUMMARY

In a statement of claim filed with the NASD on or about October 17, 1989, Claimants Alan & Shawn Epstein ("the Epsteins") alleged that their stockbroker, Alan Hartmann began making unauthorized trades in naked options in the Epsteins' securities account maintained at Respondent E.F. Hutton & Company, Inc. now known as Shearson Lehman Brothers, Inc. ("Shearson"). The Epsteins alleged that the unauthorized option trades occurred in September of 1987. The Epsteins alleged that Hartmann told them that he would positively limit the losses in their account to no more than \$1,000.00. The Epsteins alleged that they discovered the unauthorized trades and informed Hartmann that all future trades should be agreed to in advance. The Epsteins also allegedly agreed that their loss limit would be raised to \$2,000.00. The Epsteins alleged that Hartmann made an additional unauthorized option trade in October of 1987 after losing the maximum amount he had guaranteed. The Epsteins alleged that Hartmann assured them that their account would recoup all losses because he was transferring their account to Shearson's error account. This allegedly took place after October 19, 1987 when the Epsteins account had a negative balance of \$17,992.60.

Shearson, in its answer which was filed with the NASD on or about January 17, 1990, alleged that this dispute was intimately connected with a pre-existing relationship between Epstein and Hartmann and that a conspiracy was conceived by them to unlawfully trade with Shearson's capital. Shearson alleged that the Epsteins transferred their account to Shearson from Thomson McKinnon when Hartmann left there and came to Shearson. Shearson alleged that the Epsteins verified in the option agreement they signed that they had three years trading experience in stock and options. Shearson alleged that the Epsteins and Hartmann were in constant communication and developed a high risk strategy which involved selling index option puts for a premium in the hope that the option would expire unexercised and the full premium would

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be retained or that they would buy puts to cover the sale at a price below the premium received to sell the puts. Shearson alleged that this strategy worked throughout the summer of 1987. Shearson alleged that this strategy failed in October of 1987 and that this was when the Epsteins complained that these trades were unauthorized.

#### RELIEF REQUESTED

The Epsteins requested recovery of the losses in their account in the amount of \$19,907.00, plus interest, attorney's fees and punitive damages. Additionally, the Epsteins requested that the debit balance in their account be forgiven.

Shearson requested dismissal of the statement of claim and counterclaimed for an award of the unsecured debit balance in the Epstein's account in the amount of \$17,887.00, plus interest from November 31, 1987 to the date of any award. The Epsteins requested dismissal of the counterclaim. Additionally, Shearson sought the \$80,006 trading loss which occurred in the Epstein's account as a consequence of the alleged conspiracy between the Epsteins and Hartmann.

#### OTHER ISSUES

During opening statements, Claimants' counsel alleged that the options trading for the Epstein account was unsuitable. Respondents' counsel objected on the basis that this allegation was not in the original statement of claim. Again in closing arguments, counsel for the Epsteins moved to amend the claim to include suitability over the Respondent's objection. The panel took this issue under advisement and determined to rule on it with issuance of an award.

#### AWARD

On Thursday, October 4, 1990 in St. Louis, Missouri during a hearing lasting a total of two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 9, 1989 by Claimants Alan and Shawn Epstein and on December 1, 1989 by William A. Hohausser, Assistant V.P. on behalf of Respondent Shearson Lehman Hutton, Inc.

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:

#### THE EPSTEIN'S CLAIM

1. All claims asserted against Shearson by the Epsteins, including the amended claim for suitability which the panel allowed and also considered, shall be and are hereby dismissed in their entirety;

SHEARSON'S COUNTERCLAIM

2. Shearson's counterclaim asserted against Alan and Shawn Epstein shall be and is hereby dismissed in its entirety;

3. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter; 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 \$400.00 previously deposited with the NASD by the Claimants Alan and Shawn Epstein. Shearson is assessed and shall pay to the NASD additional forum fees in the amount of \$400.00.

Dated: 10/20/90

Thomas A. Cipolla  
Thomas A. Cipolla, Esq.  
Presiding Chair

Dated: \_\_\_\_\_

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Peggy Prince Finn

Dated: \_\_\_\_\_

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John Shepley

DATE SERVED: 11-1-90

SHEARSON'S COUNTERCLAIM

2. Shearson's counterclaim asserted against Alan and Shawn Epstein shall be and is hereby dismissed in its entirety;

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Dated: \_\_\_\_\_

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Thomas A. Cipolla, Esq.  
Presiding Chair

Dated: 11/27/90

Peggy Prince Finn  
Peggy Prince Finn

Dated: \_\_\_\_\_

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John Shepley

SHEARSON'S COUNTERCLAIM

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Dated: \_\_\_\_\_

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Thomas A. Cipolla, Esq.  
Presiding Chair

Dated: \_\_\_\_\_

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Peggy Prince Finn

Dated: 11/22/96

John Shepley  
John Shepley