

Arbitration

National Association of  
Securities Dealers, Inc.  
425 California St., Rm. 1400  
San Francisco, CA 94104  
(415) 781-3343  
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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stanley K. & Elizabeth A. Morris

89-03074

Name of Respondent(s)

E.F. Hutton & Company, Inc.  
Shearson Lehman Hutton, Inc., successor  
Ernest R. Dewey

SUMMARY OF ISSUES

This case was filed on November 6, 1989. Claimants alleged negligence, tortious breach of fiduciary duty, tortious breach of the obligation of good faith and fair dealing, breach of contract, and violation of the Securities Act of 1933 and the Securities and Exchange Act of 1934, in connection with their investments in National Federal Securities Trust, Liberty Allstar Fund, American First Participating Mortgage Fund, Hutton Investment Series Government Series, Silver Screen Partners III, Mendik Real Estate Limited Partnership, which Claimants alleged were unsuitable investments. Respondents denied the allegations made by Claimants. They alleged that the investments were suitable, that all investments were discussed with the Claimants and they understood them and the risks involved. Respondents further alleged that (1) Claimant's losses, if any, were suffered as a direct and proximate result of the actions of Claimants and/or third parties after Claimants no longer maintained accounts with Respondents, (2) Claimant's losses, if any, were incurred as a direct and proximate result of fluctuations in the marketplace and as a result of general economic conditions, and not as a result of any wrongdoing by the Respondents, (3) Claimants ratified and approved all transactions with full knowledge of the potential risks, and their claims are therefore barred, and (4) Claimants' claims are barred by the statutes of limitations applicable to claims asserted in the statement of claim.

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DAMAGES AND RELIEF REQUESTED

Claimants requested: (1) \$18,431.68 in damages for brokerage commissions and administrative costs paid, unnecessary taxes paid, and lost investment profits, together with prejudgment interest on such amounts from the dates the losses were incurred, at the rate of 10% per annum; (2) punitive damages of \$12,000.00; (3) attorneys' fees and costs of Arbitration; and (4) for such other and further relief as the Arbitration Panel may deem just under the circumstances.

DAMAGES AND RELIEF AWARDED

On July 20, 1990 in Seattle Washington, the undersigned arbitrators heard the controversy, in two sessions, between the parties as set forth in submissions to arbitration signed by the Claimants on October 4, 1989 by Respondent Shearson Lehman Hutton, Inc. on January 11, 1990, and by Respondent Ernest Dewey on December 27, 1989.

The arbitrator, 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. Claimants were unsophisticated investors who relied on respondent Dewey and E.F. Hutton to select investments suitable for their needs, and Hutton and Dewey had a fiduciary duty to Claimants with respect to selection of investments for their account. The arbitrator finds that claimants requested respondents Dewey and E.F. Hutton to select investments in the two accounts at issue that would preserve the principal funds invested for specific purposes, which were (1) to provide approximately \$17,000.00 in living expense funds on January 1, 1989; and (2) to provide funds for the purchase of a retirement home on or about November, 1988. Consequently, respondents' selection of long-term, income-oriented mutual funds with substantial volatility and exit commission charges, and long-term, income-oriented limited partnerships was unsuitable.

With respect to the \$17,010.24 invested in National Federal Securities Trust on September 3, 1986, the arbitrator finds that claimants specifically instructed respondents Dewey and Hutton that they wanted these funds to be invested in a Certificate of Deposit ("CD") or other fixed term investment to mature on January 1, 1989 and that respondents Dewey and Hutton failed to carry out claimants' instructions. Therefore, claimants are awarded \$4,976.60, which the arbitrator finds to be claimants' out of pocket loss, consequential damages, and interest to August 15, 1990.

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With respect to the investment of \$63,000 on or about October 23, 1986 in the Liberty All-Star, American First Mortgage and Hutton Investment Government Series Funds and in the Silver Screen and Mendik Limited Partnerships, the arbitrator finds that these investments were unsuitable but that claimants gave no specific instruction to invest these funds in a CD type investment. Therefore, claimants are awarded their out-of-pocket loss, including commissions paid, but offset by dividends and profits earned, in the amount of \$90.10. Claimants are also awarded statutory interest at the rate of ten percent from November 1, 1988, which the arbitrator finds to be, according to the evidence, a reasonable date by which claimants would have expected to liquidate their investments if they had been invested to meet their objectives, to August 15, 1990, in the amount of \$16.12.

In summary, Respondents are liable and shall pay to Claimants the sum of Five Thousand Eighty-Two Dollars and Eighty-Two cents (\$5,082.82).

2. The arbitrator finds that it is unnecessary to determine whether New York or Montana law applies to the punitive damage issue, or whether the arbitrator is empowered by the Montana Code Annot. Section 27-1-221 to award punitive damages. The arbitrator finds that the evidence did not establish that respondents acted with actual malice or actual fraud, as defined by M.C.A. Section 27-1-22. Therefore, no punitive damages will be awarded.
3. The parties shall each bear their respective costs including attorneys' fees.
4. In accordance with Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by the claimant as an assessment of forum fees by the arbitrator. Further, pursuant to section 43, Respondent Shearson Lehman, is liable for forum fees in the amount of \$400.00, to be paid directly to the National Association of Securities Dealers, Inc. Respondents are jointly and severally liable for reimbursing claimants said \$400.00 filing fee.

Arbitrator Signature



Fredrick Davis Huebner