

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Richard A. Wheeler

89-03326

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
John Smilgin

CASE SUMMARY

In a Statement of Claim filed with the NASD on November 27, 1989, Claimant Richard A. Wheeler alleged that Respondents acted as follows:

1. Invested his total savings in an unsuitable over-the counter stock;
2. Attempted to conceal their actions by falsifying the new account form; and,
3. Violated Wisconsin Law by failing to send Claimant a copy of the new customer information form.

In addition, Claimant alleged that Respondent Shearson Lehman Hutton negligently failed to adequately supervise Respondent Smilgin. The above acts complained of allegedly violate federal and state securities laws, NYSE and NASD rules and common law negligence.

In a Statement of Answer filed with the NASD on January 13, 1990, Respondent John Smilgin and Shearson Lehman Hutton, Inc. denied that they were indebted to the Claimant in any sum whatsoever, stating that Claimant provided the information for the new account statement knowing it was inaccurate; that Claimant was the only one who knew he was investing all his net worth in one over-the-counter stock; that Claimant was willing to take that risk; and, that Claimant must now assume responsibility for that decision.

RELIEF REQUESTED

Claimant requested that an award be entered against Respondents in the sum of \$34,283.66 plus margin interest paid, statutory interest at the rate of 5%, reasonable attorneys fees, costs and disbursements.

Respondents requested that the arbitration panel enter an award finding that neither Respondent are obligated to Claimant in any sum whatsoever.

AWARD

On October 11, 1990, in Milwaukee, Wisconsin during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 12, 1989 by Claimant Richard Wheeler, on January 15, 1990 by William Kohauser on behalf of Respondent Shearson Lehman Hutton, Inc. and on January 17, 1990 by Respondent John Smilgin.

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, 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:

1. Respondents Shearson Lehman Hutton, Inc. and John Smilgin are jointly and severally liable for and shall pay to Claimant Richard Wheeler the amount of \$11,428.00.

2. Each party shall bear their own costs, including attorneys' fees, except for those enumerated herein.

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$120.00 filing fee and the \$280.00 hearing session deposit previously deposited with the NASD by the Claimant Richard Wheeler. Claimant Richard Wheeler is liable for and shall pay to the NASD additional forum fees of \$120.00. Respondents Shearson on Lehman Hutton, Inc. and John Smilgin are jointly and severally liable for and share pay to the NASD additional forum fees of \$400.00.

By the Panel

Dated: 11-26-90 /s/ W H Levitt
William H. Levitt, Jr.

Dated: _____ /s/ _____
Harry G. Slater

Dated: _____ /s/ _____
John H. Wolf III

4-1-1-1-1

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By the Panel

Dated: _____ /S/ _____
William H. Levit, Jr.

Dated: November 23, 1990 /S/ Harry G. Slater
Harry G. Slater

Dated: _____ /S/ _____
John H. Wolf III

79-3326

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By the Panel

Dated: _____ /S/ _____
William H. Levit, Jr.

Dated: _____ /S/ _____
Harry G. Slater

Dated: 11/28/90 /S/ [Signature]
John H. Wolf III