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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Charles D. Trover  
Personal Rep. of Est. of  
Gina Lee Trover

Claimant

vs.

Shearson Lehman Hutton, Inc.

Respondent

AWARD

NASD NO. 90-00280

REPRESENTATION

Claimant was represented by John R. Barker, Esq. of the firm of Bittner & Barker, P.C. and respondent was represented by Thomas C. Sand, Esq. of the firm of Miller, Nash, Wiener, Hager & Carlsen.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on January 29, 1990.

Claimant alleged: 1. Violation of Oregon Securities law, ORS 59.115 and 59.135; 2. Violation of the Securities Act of 1933, Section 12(2); 3. Violation of the Securities Exchange Act of 1934, Rule 10b(5); 4. Breach of contract; 5. Common law fraud; 6. Negligent misrepresentation; and 7. Breach of fiduciary duty in the purchase of Allied Stores bonds.

Respondent denied claimant's allegations and alleged the following affirmative defenses: 1. Failure to state a cause of action upon which relief can be granted; 2. Respondent acted in compliance with all applicable rules, regulations and procedures and acted in good faith and did not induce alleged act or acts, if any, constituting alleged violations of law; 3. Lack of causation; 4. Failure to mitigate damages; 5. Lack of detrimental reliance; 6. Waiver; 7. Allegations regarding punitive damages are conclusory and fail to set out ultimate facts; 8. Due process clause of United States Constitution and applicable provisions of the New York State Constitution preclude recovery of punitive

damage; and 9. New York law which claimant expressly agreed governs this dispute precludes the recovery of punitive damages.

#### DAMAGES AND RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$247,986.00;
2. Interest from date of his investment until the present, at the rate of 11 1/2% specified in the bonds on his claim under Oregon Securities law, or at the rate of 9% on all other claims;
3. Attorney's fees not less than \$10,000.00;
4. Punitive damages of at least \$500,000.00.

#### DAMAGES AND RELIEF AWARDED

On April 17, 18, June 6, and 7, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on January 21, 1990 and by Respondent on April 27, 1990. The hearing was conducted in Portland, Oregon and lasted twelve sessions, including four pre-hearing sessions on August 3, 1990, December 18, 1990, February 8, 1991 and March 4, 1991. 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. Respondent is liable for and shall pay to claimant the sum of \$128,000.00.
2. All other claims including the claim for punitive damages, are dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.
4. Claimant is to return to Respondent, without consideration, all of the Allied Store's 11 1/2% senior subordinated debentures due March 15, 1997.

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5. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators which is, however, assessed against Respondent and is to be paid to Claimant. In addition, Respondent is also assessed fees of \$8,200.00 representing charges for forum fees payable to the NASD, Inc.

ARBITRATORS CONCURRING

DATE SERVED: 07/08/91

Thomas P. Joseph, Jr., Esq.

5. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators which is, however, assessed against Respondent and is to be paid to Claimant. In addition, Respondent is also assessed fees of \$8,200.00 representing charges for forum fees payable to the NASD, Inc.

ARBITRATORS CONCURRING

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Thomas P. Joseph, Jr., Esq.

DATE SERVED: 07/08/91

  
Gordon MacMillan

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Paul K. Wichman

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