

Arbitration

N.A.S.D. AWARD

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Susan L. Gibson )

Case No. 90-00324

Name of Respondent(s) )

Shearson Lehman Hutton, Inc. )  
Josephthal & Co., Inc. )  
Peter Gibson )

Heard before the Arbitrator:

Mark C. Perry, Esq.

Public

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 30, 1990. Claimant, Susan L. Gibson ("Gibson"), alleged that Respondent, Shearson Lehman Hutton, Inc. ("Shearson"), either closed or transferred her account to Respondent, Josephthal and Company, Inc. ("Josephthal"); notarized a forgery of her signature on a document; failed to supervise its employees; breached its fiduciary duty; and caused the loss of 300 shares of Exxon stock. Claimant alleged that Josephthal permitted the opening of an account with her funds and in her name without her authority to do so; transferred funds and issued a check to Claimant which were sent solely to Third Party Respondent, Peter Gibson ("P. Gibson"); that Josephthal's actions constituted breach of fiduciary duty and negligence; and, Claimant requested the imposition of a constructive trust.

In a Statement of Answer filed with the NASD on May 3, 1990, Respondent, Shearson, denied all allegations of wrongdoing and alleged that Claimant's husband, P. Gibson, was her account executive at Shearson; that Shearson paid out a total of \$12,052.00 upon Claimant's authorization as a loan and liquidation against the Exxon stock; timely provided all documents related to Claimant's account; properly supervised its employees; and, complied with all

applicable rules and regulations. Shearson alleged the affirmative defenses of failure to state a claim; failure to exercise due diligence; contributory negligence; non-discretionary account; all activity directed by Claimant; Claimant proximately caused her own losses; bar by estoppel, waiver and laches; no scienter; statute of limitations; no jurisdiction for attorney's fees or punitive damages; failure to comply with Section 768.72, Florida Statutes; violation of due process; and, violation of equal protection clause, Fourteenth Amendment of U.S. Constitution.

In a Statement of Answer filed with the NASD on April 27, 1990, Respondent, Josephthal, denied all allegations of wrongdoing and alleged that none of the documents are forgeries; that Josephthal was never advised of inconsistencies between the name and account number at Bank Atlantic; Claimant received four monthly account statements and ratified all transactions in her account; the claim is the result of a bitter marital dispute; and, Josephthal exercised good faith.

Respondent, Josephthal, filed a Third Party Claim and alleged that Peter Gibson is liable for any amounts that may be awarded to Claimant.

Third Party Respondent did not file an Answer, but appeared at the hearing to defend the claim against him.

#### RELIEF REQUESTED

Claimant requested rescission or, in the alternative, damages in the amount of \$10,446.00, interest, \$1,000,000.00 punitive damages, attorney's fees pursuant to Section 517.301 Florida Statutes, costs and expenses.

Respondents, Shearson and Josephthal, requested dismissal and costs. Josephthal requested indemnification from P. Gibson.

#### AWARD

On February 1, 1991, in Fort Lauderdale, Florida during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Susan Gibson, on January 26, 1990; by William Hohauser on April 17, 1990, on behalf of Respondent, Shearson; by Raymond Mando on April 26, 1990, on behalf of Respondent, Josephthal; and, by Third Party Respondent, Peter Gibson, on February 1, 1991. After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.
2. Respondents, Shearson and Josephthal, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant's requests for attorney's fees, costs, and punitive damages are denied.

4. Third Party Respondent, Peter Gibson, is found not liable and, therefore, all claims against him are hereby dismissed.

#### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum in the amount of \$600.00 (two sessions x \$300.00). Claimant is hereby assessed \$200.00, for which the NASD shall retain \$200.00 of the filing fee previously deposited in full satisfaction thereof. Respondent, Shearson, is hereby assessed \$200.00, \$100.00 of which shall be paid directly to the Claimant, and \$100.00 of which shall be paid to the National Association of Securities Dealers, Inc. Respondent, Josephthal, is hereby assessed \$200.00 for which the NASD shall retain the \$200.00 session deposit previously deposited in full satisfaction thereof. In addition Josephthal shall pay to the National Association of Securities Dealers, Inc., the \$500.00 non-refundable filing fee due and owing for its Third Party Claim. In addition, the NASD shall retain the \$100.00 non-refundable filing fee deposited by Claimant.

5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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

#### OTHER ISSUES

None.

Arbitrator Signature

  
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Mark C. Parry, Esq.

Date of Decision: February 13, 1991