

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	x
	x
Sharon Miller and Miriam Parker,	x
Claimants	x
	x CASE NO.
vs.	x 90-00325
	x
Shearson Lehman Hutton, Inc. and	x AWARD
Richard Schwartz,	x
Respondents	x
	x
vs.	x
	x
Robert Johnson,	x
Third Party Respondent	x
	x

CASE SUMMARY

Claimants, Sharon Miller and Miriam Parker (collectively, "Claimants"), alleged that Respondent Richard Schwartz ("Schwartz"), while employed by Respondent Shearson Lehman Hutton, Inc. ("Shearson"), executed trades in the Claimants' account without regard to the suitability of the investments and improperly placed the Claimants on margin. Claimants also alleged that Schwartz churned their account to generate excess commissions, and that Shearson failed to properly supervise him.

Shearson contended that all trading in the Claimants' account was fully authorized and suitable, and that the Claimants understood the nature of margin trading. Shearson asserted a cross-claim against Schwartz for indemnification in which they alleged that any wrongful acts committed by Schwartz were outside the scope of his employment.

Schwartz contended that the Claimants were fully aware of the activity and risks in their account, and that they had an active role in the management of their account. Schwartz asserted a cross-claim against Shearson and a third-party claim against Respondent Robert Johnson ("Johnson"), in which he alleged that Shearson and Johnson intentionally delayed in filing Schwartz's U-5 in an effort to punish Schwartz and to force his customer base to remain at Shearson.

Shearson and Johnson denied the allegations made against them, and Johnson asserted a counterclaim against Schwartz to recover damages for pecuniary harm and emotional distress.

RELIEF REQUESTED

The Claimants requested actual damages of \$ 92,000.00 and punitive damages of \$408,000.00. Shearson requested dismissal of all claims and cross-claims made against it, and, pursuant to its cross-claim against Schwartz, indemnification for any liability it may have to the Claimants, plus punitive damages of \$750,000.00. Schwartz requested dismissal of all claims, counterclaims and cross-claims made against him, and, pursuant to his cross-claim against Shearson and third-party claim against Johnson, actual damages of \$225,000.00 plus interest, and punitive damages of \$675,000.00. Johnson requested dismissal of all claims made against him, and, pursuant to his counterclaim against Schwartz, punitive damages of \$750,000.00.

AWARD

On January 28 and March 1 & 13, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants Sharon Miller and Miriam Parker on January 19, 1990, by Respondent Shearson Lehman Hutton, Inc. on April 9, 1990, by Respondent Richard Schwartz July 11, 1990, and not by Respondent Robert Johnson as is required by Section 12 of the NASD's Code of Arbitration Procedure. The initial claim was filed on January 30, 1990. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in New York City, NY, and consisted of seven (7) hearing sessions, which includes a one (1) session prehearing conference conducted on January 23, 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. At the opening of the hearing on January 28, 1991, the arbitrators were informed as follows:
 - a. Shearson had settled its cross-claims against Schwartz;
 - b. Schwartz had settled his cross-claims against Shearson;
 - c. Schwartz had settled his third-party claims against Johnson; and
 - d. Johnson had settled his counterclaims against Schwartz.

Therefore, all the above mentioned claims were discontinued

with prejudice, and the hearing continued strictly on the Claimants' claims against Shearson and Schwartz.

2. Damages:

The panel finds that the total amount of damages sustained in the Claimants' account was Twenty Six Thousand Three Hundred Three Dollars And Thirty Two Cents (\$26,303.32), inclusive of interest.

Liability:

The Respondents Shearson Lehman Hutton, Inc. and Richard Schwartz be and hereby are jointly and severally liable and shall pay to the Claimants Sharon Miller and Miriam Parker 75% of the total amount of damages sustained in the account, or Nineteen Thousand Seven Hundred Twenty Seven Dollars And Forty Nine Cents (\$19,727.49), inclusive of interest. The entire amount of damages was not awarded because the panel found that the acts and omissions of Claimant Sharon Miller contributed to the damages sustained in the Claimants' account in the amount of Six Thousand Five Hundred Seventy Five Dollars And Eighty Three Cents (\$6,575.83), or 25% of the total damages.

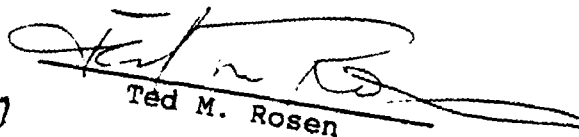
3. The Claimants' request for punitive damages is denied in full.
4. The parties each shall bear their respective costs, including attorneys' fees.

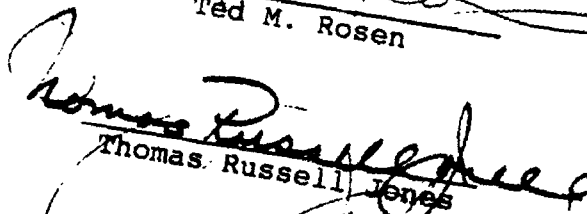
Forum Fees:

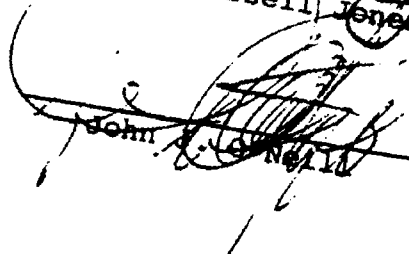
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimants, and the Respondents Shearson Lehman Hutton, Inc. and Richard Schwartz be and hereby are jointly and severally liable and shall pay to the National Association of Securities Dealers, Inc. the sum of FOUR THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS (\$4,700.00), as costs of the seven (7) hearing sessions conducted in this matter. In addition, Respondents Shearson Lehman Hutton, Inc. and Richard Schwartz be and hereby are jointly and severally liable and shall pay to the Claimants Sharon Miller and Miriam Parker the sum of Seven Hundred Fifty Dollars and No Cents (\$750.00) to offset the filing fee previously deposited by the Claimants.

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Miller/Parker Award

CONCURRING ARBITRATORS


Ted M. Rosen


Thomas Russell Jones


John C. Smith

Dated: April 29th, 1991

State of: New York

County of: Nassau

SS.:

On the 19th day, of June, 1991, before me personally appeared Ted M. Rosen to me known and known to me to be the person who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[Signature]

Notary Public, State of New York
No. 4932688
Qualified in Nassau County
Commission Expires July 28, 1991

State of: New York

County of: Kings

SS.:

On the 26 day, of April, 1991, before me personally appeared Thomas Russell Jones to me known and known to me to be the person who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Bertha K. Jones

Bertha K. Jones
Notary Public State of New York
No. 1992540
Qualified in Kings County
Commission Expires 03/30/93

State of: New York

County of: NASSAU

SS.:

On the 24th day, of April, 1991, before me personally appeared John J. O'Neill to me known and known to me to be the person who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[Signature]

MARIA BRODY
Notary Public, State of New York
No. 4932688
Qualified in Nassau County
Commission Expires July 28, 1991