

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Kenneth J. and Maureen Reilly

90-00389

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Robert Cutrupi

CASE SUMMARY

Claimants alleged that Respondents represented that they would not be charged fees for their IRA accounts but subsequently discovered that they were charged a fee. Claimants further alleged that Respondents misrepresented the nature of a mutual fund investment and later refused to reverse the sale without penalty. Claimants also alleged that they did not receive a prospectus on the mutual funds before the sale was made. Respondents maintained that the Claimants were knowing participants in all of their investment decisions and initiated transactions themselves on occasion. Respondents further maintained that any losses to the Claimants were the consequence of being in the market at an unfortunate time.

RELIEF REQUESTED

Claimants requested reinstatement of their original position of \$83,000.00 prior to the purchase of the mutual funds, return of all IRA fees charged on their IRA accounts, interest, costs and expenses, and treble damages. Respondents requested that the claims of the Claimant be dismissed.

AWARD

On November 13, 1990 in New York City, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants Ken and Maureen Reilly on January 22, 1990, by Respondent Shearson Lehman Hutton, Inc. on March 29, 1990, and by

Respondent Robert Cutrupi on April 5, 1990. The initial Statement of Claim was filed on February 6, 1990. 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 Shearson Lehman Hutton, Inc. is liable and shall pay to the Claimants Ken and Maureen Reilly the sum of One Thousand Dollars and No Cents (\$1,000.00).

(2) Respondent Shearson Lehman Hutton, Inc. is liable and shall pay to the Claimants Ken and Maureen Reilly the sum of One Hundred Eighty Dollars and No Cents (\$180.00) representing IRA charges made to the Claimant for 1988, 1989, and 1990. This panel further orders that as of January 1, 1991, Shearson Lehman Hutton, Inc. may commence charging fees on the Claimants' IRA accounts.

(3) The Claimants' claims against Respondent Robert Cutrupi be and hereby are dismissed in their entirety.

(4) Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall refund the \$400.00 filing fee previously deposited by the Claimants, and Respondent Shearson Lehman Hutton, Inc. is hereby assessed \$800.00 in forum fees made payable to the NASD, Inc. as costs of the two hearing sessions conducted in this matter.

Arbitrator(s) Signature

Kevin M. Kelly

Dated: