

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Lois McLain

90-00435

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Richard Stroud
William A. (Sandy) Abshire

REPRESENTATION

Claimant was represented by William C. Chevaillier, Esq., of Mysock & Chevaillier, Tulsa, Oklahoma. Respondents were represented by Jack D. Ballard, Esq., of Hutcheson & Grundy, Houston, Texas.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about February 9, 1990, Claimant Lois McLain ("McLain") alleged violations of Section 17(a) of the Securities Act of 1933, Section 10b of the Securities Exchange of 1934 and Rule 10b-5 promulgated thereunder. McLain alleged that Respondent William Abshire ("Abshire") excessively traded McLain's securities account which was opened and maintained at Respondent Shearson Lehman Hutton, Inc. ("Shearson") between March 3, 1987 and December 16, 1988. McLain also alleged that Abshire made unsuitable investments in McLain's account through the use of a margin account and that the actions of Abshire and Shearson constituted securities fraud under the Oklahoma Securities Act. Additional causes of action asserted by McLain included negligence and fraud.

In a joint Statement of Answer filed with the NASD on or about May 21, 1990, Shearson, Abshire and Stroud alleged that the risks of options trading and margin trading were fully disclosed to McLain. It was further alleged that McLain's withdrawals from her account were even against her portfolio and that interest would be charged on a daily basis. Respondents denied that the account was churned or that margin trading was unsuitable for McLain. Respondents also denied that any fraud was committed and asserted affirmative defenses of estoppel and ratification.

RELIEF REQUESTED

McLain requested actual damages of \$37,000 and exemplary damages of \$450,000 assessed against each Respondents, costs and attorney's fees.

Shearson, Abshire and Stroud requested dismissal of the claim in its entirety.

PROCEDURAL MATTERS

On May 3, 1991 in Oklahoma City, Oklahoma during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 2, 1990 by Claimant Lois A. McLain, on July 11, 1990 by Neil A. Sussman on behalf of Respondent Shearson Lehman Hutton, Inc., on July 6, 1990 by Respondent Richard A. Stroud and on July 10, 1990 by Respondent William A. Abshire.

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 original(s) remain on file with the NASD.

AWARD

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. Shearson and Abshire are jointly and severally liable for and shall pay to McLain the sum of \$10,000 in the issue of unsuitability;

2. All other claims asserted by McLain against Shearson and Abshire shall be and are hereby denied and dismissed in their entirety;

3. All claims asserted against Stroud by McLain shall be and are hereby denied and dismissed in their entirety;

4. Shearson and Abshire are jointly and severally liable for and shall pay to McLain the sum of \$7,500 as her reasonable attorney's fees. In making this award the panel considered the authorities set forth in the parties' post-hearing submissions on this issue and specifically the Oklahoma Securities Act. The panel finds sufficient basis for an award of attorney's fees exists in this statute;

5. The parties shall each bear all other costs and expenses not enumerated elsewhere in this award; and

6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$550.00 previously deposited with the NASD by the Claimant Lois McLain. Shearson is assessed and shall pay to the NASD additional forum fees of \$750.00 and McLain shall pay additional forum fees of \$200.00.

Dated: October 15, 1991

S/S Thomas A. Bamberger, Esq.
Presiding Chair
Public Arbitrator

Dated: October 16, 1991

S/S Freeman H. Beets
Public Arbitrator

Dated: September 16, 1991

S/S William Massad
Industry Arbitrator

Date Served by the NASD: October 17, 1991