

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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

In the Matter of the Arbitration Between)

Name of Claimant(s))

Patsy A. Minshall)

Case No. 90-00510

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)
Desmond Judge)

Heard before the members of the Arbitration Panel:

David A. Townsend, Esq.
Robert M. Shavick
Joseph G. Lananna

Public
Public
Industry

REPRESENTATION

Claimant, Patsy A. Minshall ("Minshall"), was represented by William C. Ballard, Esq. of Fisher & Sauls, P.A.

Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Desmond Judge ("Judge"), were represented by Linda Yarden, Esq. of Shearson Lehman Brothers, Inc.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 21, 1990. Claimant alleged that Respondents, Shearson and Judge, were liable for breach of a fiduciary duty owed to the Claimant; appropriating or converting portions of Claimant's investment fund; churning or over-trading; committing acts of unsuitability, consisting in part of having recommended a speculative subordinated debenture for purchase on margin; that Shearson was negligent in failing to supervise the activities of its representative, Judge; and that the conduct of Judge was sufficiently willful and reckless as to constitute a justification for an award of punitive damages. Shearson and Judge alleged that: the account relationship was non-discretionary; that Claimant sought high yield income with some risk; that the Claimant was fully informed and advised at all times; that the pre-requisite of scienter for the bulk of the claims alleged by the Claimant is not present; and that the Claimant's loss was attributable directly to unexpected and uncontrollable events occurring in the marketplace.

The Respondents filed a Statement of Answer on June 18, 1990 and denied all allegations of wrongdoing. Respondent, Shearson, asserted a counter claim based upon the Client Agreement executed by the Claimant at the time the account was established, seeking the recovery of a debit balance in the account. The Claimant responded to the counter claim, admitted to the deficit but claimed that the deficit existed only because of the refusal of Respondents, Shearson and Judge, to sell junk bonds held in her account, contrary to written demand for sale made by Claimant on March 12, 1991.

RELIEF REQUESTED

Claimant requested damages in the amount of \$175,000.00, plus interest, attorney's fees and expenses. Respondents requested that the claim be dismissed and that Shearson be awarded the Claimant's margin account debit balance of \$20,455.10.

AWARD

On July 29, 30 and 31, 1991, in Tampa, Florida, during hearings lasting five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant on March 21, 1990; by Respondent, Judge, on June 13, 1990; and, signed on June 13, 1990, by Linda Yarden on behalf of Shearson.

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have 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 originals remain on file with the NASD.
2. Respondent, Judge, is found not liable and, therefore all claims against him are hereby dismissed. Respondent, Judge, acted in good faith, and perhaps to some extent over zealously, to meet the high yield income with some risk goals that were established by the Claimant; there was no evidence to support any finding of fraud or scienter on the part of Judge and Judge at all times only recommended securities which were recommended by his principal, Shearson.
3. There is evidence to indicate that the Claimant may have been somewhat irresponsible in that she may have failed to exercise the quantum of control over her account which she contracted to do in her legal relationship with Shearson. If Claimant intended for Judge and Shearson to exercise discretionary control over her account and bear the legal responsibility that attends it, she should have contracted accordingly. The panel finds that Judge fulfilled his duty of communicating with Claimant and that the Claimant consented to his recommendations.

4. Respondent, Shearson, is found to have been negligent in exercising its supervisory authority to the extent that high-risk junk bonds were purchased on margin, thereby placing a substantial portion of Claimant's account at an unacceptable level of risk. The Panel emphasizes that it was the margin purchase aspect of this transaction that gives rise to this ruling herein.

5. This Panel finds that 85% of the S.C.I. bonds, which represents that percentage which was purchased by Claimant on margin, shall be re-purchased by Respondent, Shearson, and that all interest paid by Respondent to Claimant on those 85 bonds be refunded by the Claimant to the Respondent; and further that all interest on margin paid by Claimant to Respondent, Shearson, be returned to Claimant.

6. Respondent, Shearson, shall compensate the Claimant for 65% of the loss incurred on the sale of the Peebles bonds. Sixty-five percent is that portion of the position which was purchased on margin.

7. The net award ordered by this Panel to be paid by Respondent, Shearson, to the Claimant is \$76,107.99. Respondent, Shearson, is entitled to dispose of the 85 S.C.I. bonds it acquires by virtue of the repurchase ordered by this Award, as it sees fit, the proceeds of such sale belonging exclusively to the repurchaser, Shearson.

8. Claimant's request for attorney's fees and expenses is denied.

9. Claimant/Counter Respondent, Minshall, is found not liable to Respondent/Counter Claimant, Shearson, and therefore, all claims against her are hereby dismissed.

10. Respondent/Counter Claimant, Shearson's request for costs and attorney's fees is hereby denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,750.00 (5 sessions x \$750.00 per session). Claimant is hereby assessed \$550.00 for which the NASD shall retain the \$550.00 previously deposited in full satisfaction thereof. Respondent, Shearson, is hereby assessed \$3,200.00, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
David A. Townsend, Esq.

/s/
Joseph G. Laranna

/s/
Robert M. Shavick

Date of Decision: October 1, 1991