

N.A.S.D. AWARD

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
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(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Shearson Lehman Hutton, Inc.)

Case No. 90-00554

Name of Respondent(s))

McCann & Associates, Inc.)

Heard before the members of the Arbitration Panel:

Stephen A. LeClair, Esq.

Henry Martin

Michael A. Coco

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CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 26, 1990. Claimant, Shearson Lehman Hutton, Inc. ("Shearson"), alleged that Respondent, McCann & Associates, Inc. ("McCann"), was a sophisticated investor with speculative investment objectives; that Robert McCann transferred his personal funds to Shearson for the purpose of trading in U.S. Treasury Bonds; that Respondent failed to pay for the purchase and the positions were liquidated at a loss creating a debit balance of \$89,658.48.

In a Statement of Answer filed with the NASD on January 11, 1991, Respondent denied all allegations of wrongdoing and alleged that Claimant violated margin requirements; liquidated the positions 26 days after the required settlement date pursuant to regulation "T"; failed to supervise the discretionary accounts; and, caused a loss to Respondent.

Respondent filed a counterclaim and alleged the forgoing violations by Shearson. Claimant/Counter Respondent denied all allegations of wrongdoing and alleged that the counterclaim fails to state a cause of action.

RELIEF REQUESTED

Claimant requested damages in the amount of \$89,658.48, interest at the legal rate and costs.

Respondent/Counter Claimant requested damages in the amount of \$36,710.99, interest at the legal rate and costs.

Claimant/Counter Respondent requested dismissal of the Counterclaim.

AWARD

On January 30, 1991, in Fort Lauderdale, Florida, during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Robert F. Jerome on behalf of Claimant, Shearson, on March 13, 1990, and signed by Robert McCann on behalf of Respondent, McCann, on January 11, 1991.

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, McCann, is found liable and shall pay to the Claimant the amount of \$67,243.86, exclusive of interest.
3. Claimant's requests for interests, attorney's fees, and costs, are denied.
4. Claimant/Counter Respondent, Shearson, is found not liable and, therefore, all claims against it are hereby dismissed.

FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,200.00 (2 sessions x \$600.00). Claimant is hereby assessed \$600.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof. Respondent/Counter Claimant, McCann, is hereby assessed \$600.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof.

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

Stephen A. LeClair, Esq., Michael A. Coco and Henry Martin.

Date of Decision: February 20, 1991