

NATIONAL ASSOCIATION OF SECURITIES, INC.

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In the Matter of ~~the~~ Arbitration Between

Frances Fisher, as Conservator for  
Bernice Kelhofer

\*Case #90-00566  
\* Award

Claimant

\*

vs.

Shearson Lehman Hutton, Inc.  
and  
Ernest Beckwith

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CASE SUMMARY

Claimant, Frances Fisher, as Conservator for Bernice Kelhofer (Claimant) alleged that Respondents, Shearson Lehman Hutton, Inc, and Ernest Beckwith ("Respondents" churned Claimant's account in order to generate large commissions. Claimant alleged that Respondents through Respondent Beckwith used investment practices which were inappropriate for Bernice Kelhofer's ("Kelhofer") situation. Claimant alleged that Respondents negligently handled her account. Claimant alleged that Respondents owed to her a fiduciary duty to handled her investments in accordance with the highest standard of professional care and that the Respondents ignored that standard and breached that duty. Claimant's further alleged that Respondents failed to explain the high risk of the trading strategy pursued, and the nature of commissions, margins, losses and profits that were being generated. That "RICO" statutes were violated.

Respondents maintained that Respondent Beckwith effectuated transactions for Kelhofer as specifically authorized by Kelhofer. Respondent maintained that Respondent Beckwith made every effort to place Kelhofer in suitable investments, and that Kelhofer decided not to take advantage of Respondents managed account which was suggested to her by Beckwith. Respondents maintained that Kelhofer's account was not churned and that the losses incurred in Kelhofer's account were due to the October 1987 stock market crash.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$427,920.00 and exemplary damages in the amount of \$1,000,000.00 and costs of \$750.00 and attorneys fees of \$60,000.00

Respondents requested that Claimant's claim be denied in its entirety and that the panel enter an award of costs in Shearson and Beckwith's favor.

AWARD

On October 30, 31, and November 3, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submission to arbitration signed by the Claimant, on February 20, 1990 and by Respondent Ernest Beckwith, on May 9, 1990. Respondent Shearson Lehman Hutton, Inc. did not execute a submission agreement; however, Shearson did submit an answer and was represented at the hearing by counsel. The arbitration panel, pursuant to Section 12(a) of the Code of Arbitration Procedure, exercised its jurisdiction over Respondent Shearson. The hearing was held in Detroit, Michigan and consisted of three (3) full day sessions or six (6) hearing sessions. 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. No cause of action as to Claimant Case is dismissed
2. The parties shall each bear their respective costs, including attorney's fees;
3. 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 Claimant.
4. Respondent Shearson is assessed forum fees in the amount of \$3,000.00 payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedures.

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ARBITRATORS CONCURRING

/s/  
Robert E. Parker

Dated: November 27, 1