

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Aaron Cohen, Sara Cohen & Nissim Mansur

90-00598

Name of Respondent(s)

E.F. Hutton & Company, Inc.,
Shearson Lehman Hutton, Inc., now
known as Shearson Lehman Brothers, Inc.
Susan Hagerty
M.W. "Mike" Minces

REPRESENTATION

For Claimant: Aaron Cohen, Sara Cohen and Nissim Mansur were represented by Brantly Harris, Esq., Houston, Texas and Sidney L. Farmer, Esq., Houston, Texas.

For Respondents: E.F. Hutton & Co., Inc., Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc. and M.W. "Mike" Minces were represented by Andrew R. Harvin, Esq. of Doyle, Reed, Restrepo, Harvin & Robbins, Houston, Texas.

Susan Hagerty was represented by Joseph F. Keenan, Esq. of Bochat & Keenan, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed: February 28, 1990

Claimants' Submission Agreement signed on: November 24, 1989

Statement of Answer filed by Respondents Shearson Lehman Hutton, Inc., Susan Hagerty and M.W. "Mike" Minces on: May 25, 1990

Respondent E.F. Hutton & Co., Inc., Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: May 23, 1990 by Linda Yarden, Vice President, Associate General Counsel of Shearson Lehman Hutton, Inc.

Respondent M.W. "Mike" Minces' Submission Agreement signed on: June 24, 1991

Respondent Susan Hagerty's Submission Agreement signed on: June 25, 1991

HEARING INFORMATION

Hearing Dates/Sessions: June 24, 1991 for two (2) sessions
June 25, 1991 for three (3) sessions
August 13, 1991 for three (3) sessions
August 14, 1991 for two (2) sessions

CASE SUMMARY

Claimants Aaron Cohen, Sara Cohen and Nissim Mansur ("Cohen") alleged that Susan Hagerty ("Hagerty"), while employed by or acting as an agent of Respondent E.F. Hutton & Co., Inc., Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc. ("Shearson"), misrepresented or failed to explain the type of investment she was placing Cohen's funds in, thereby investing the funds in trading in options and stocks on margin which were unsuitable given Cohen's investment objectives and designed solely to generate commissions. It was further alleged that Respondent M.W. "Mike" Minces ("Mince"), Hagerty's office manager, failed to adequately supervise the account even after he assured Cohen that he would carefully supervise the account, taking time from other duties as required.

As alleged in the Statement of Claim, Aaron Cohen was a retired businessman living in Mexico City who had never had a brokerage account before and did not speak English. Cohen met Hagerty in February of 1987, at that time explaining to her that his primary objective was to protect his life's savings of \$2.2 million, which were then on deposit in savings institutions in Houston. Hagerty had Cohen sign forms in English which were contrary to his objectives, authorizing Hagerty to trade in options, borrow money on margin and giving Hagerty complete discretion over the transactions in the account, but failed to supply Cohen with an options risk disclosure statement. Hagerty began trading in puts and calls and stocks on margin. In May of 1987, Cohen explained his investment objectives to Minces, who advised Cohen that he would carefully supervise the account. Cohen deposited an additional \$2 million in the account in July of 1987, instructing Hagerty to place \$1.9 million in the money market. Hagerty instead expanded her trading in the account. Due to the above actions, substantial sums were lost in the market crash of 1987. Based upon the above allegations, Cohen asserted claims for breach of fiduciary duty; violation of Section 10 of the Securities Exchange Act of 1934 and Rule 10b-5; violation of Section 12 of the Securities Exchange Act of 1933; violation of Section 9 of the Securities Exchange Act of 1934 and Rule 240.9b-1; violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Sec. 1961-1968, as specifically authorized by 28 U.S.C. Sec 1964(c); violations of the Texas Securities Act, Article 581-33, Tex. Rev. Civ. Stat. Ann.; and for gross or simple negligence.

Respondents Shearson, Hagerty and Minces denied the material allegations of the Statement of Claim alleging that:

- 1) Cohen was a sophisticated, wealthy businessman who was knowledgeable of his investments, enjoyed gambling and invested in other markets;
- 2) Hagerty questioned Cohen and filled out the New Account Form with the information supplied to her by Cohen, including his "current investment objectives" of Tax Free Income, Fixed Income, Income Moderate Growth, Long Term Growth, Businessman's Risk-Appreciation, Trading Short Term, and Option Trading;
- 3) Cohen executed a Discretionary Authorization Form, granting, in writing, discretion over his account to Hagerty;

4) Cohen received all monthly statements pursuant to his instructions, had knowledge of all trades and ratified all such activity.

In addition, Respondents asserted the following affirmative defenses:

- 1) The Statement of Claim fails to state a claim upon which relief can be granted;
- 2) Claimants' claims are barred by the principles of waiver and estoppel;
- 3) Claimants' claims are barred in whole or in part by the doctrines of laches, ratification and affirmance or acquiescence in the conduct alleged;
- 4) Respondents acted in compliance with all applicable rules and regulations and acted in good faith and did not directly or indirectly induce any of the alleged acts constituting the wrongful conduct;
- 5) Claimants' demand for judgment includes an award of punitive damages in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;
- 6) The Racketeer Influenced and Corrupt Organizations Act ("RICO"), (18 U.S.C. Sections 1961-1968) is unconstitutionally vague and awarding Claimants damages pursuant to RICO would be unconstitutional.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents in the sum of \$820,723.80 for actual damages plus interest at 10% per annum from February 11, 1988 until paid; punitive damages of \$2,462,171.40 plus interest at 10% per annum from February 11, 1988 until paid; treble damages pursuant to RICO; attorneys' fees and costs.

Respondents requested that the Statement of Claim be dismissed and denied in its entirety and that Respondents be awarded costs and attorneys' fees incurred in this matter.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and post hearing submissions, the undersigned 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. Respondents Shearson Lehman Brothers, Inc., Susan Hagerty and M.W. "Mike" Minces are jointly and severally liable for and shall pay to the Claimants Aaron Cohen, Sara Cohen and Nissim Mansur the

sum of \$707,435.12 plus simple interest at the rate of 6% per annum from February 11, 1988 until the total award is paid in full;

3. The claims for punitive damages or RICO damages are hereby dismissed and denied in their entirety;

4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants Aaron Cohen, Sara Cohen and Nissim Mansur. Claimants Aaron Cohen, Sara Cohen and Nissim Mansur are liable for and shall pay to the NASD additional forum fees in the sum of \$4250.00. Respondents Shearson Lehman Brothers, Inc., Susan Hagerty and M.W. "Mike" Minces are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$5000.00.

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

BY THE ARBITRATION PANEL

Dated:

Raymond L. Britton
Raymond L. Britton, Esq.
Public Arbitrator
Chairperson

November 4, 1991

John A. Selman
John A. Selman, Esq.
Public Arbitrator

November 4, 1991

Joan L. Lavell
Joan L. Lavell
Industry Arbitrator

November 5, 1991

Date Served: November 25, 1991