

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Mrs. Munira H. Ismail & Ismail

90-00645

Name of Respondent(s)

E.F. Hutton & Company, Inc.  
David Boyd

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SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on March 5, 1990.

Claimants alleged that, in connection with the sale of Kemper Option Income Fund and simultaneous purchase of shares of National Total Income Fund, Respondents made serious mistakes and mismanaged their portfolio. Claimants alleged that Respondents misrepresented the facts and caused serious breach of trust and confidence, and did not execute their transactions as the Claimants instructed.

DAMAGES AND RELIEF REQUESTED

Claimants requested that they be made whole with respect to the alleged loss of capital, loss of dividends and the equity position. Specifically, Claimants requested:

- (1) reimbursement of \$9,039.65 (loss of capital),
- (2) reimbursement of the brokerage charged on the purchase and sale of 6333 NATL 06,
- (3) refund of the brokerage charged on the sale of 5431 KEMP 09,
- (4) refund \$448.00 charged in the error report,
- (5) refund all margin interest charged from December 1986 until August 17, 1988.
- (6) reimbursement of all NASD fees and expenses paid, and
- (7) reimbursement of medical expenses.

Respondents requested:

- (1) entry of judgment in favor of Respondents,
- (2) attorneys' fees and costs of suit incurred herein, and
- (3) for such other and further relief as the panel may deem just and proper.

### DAMAGES AND RELIEF AWARDED

On December 11, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 27, 1990 and by Respondent Shearson Lehman Hutton, inc. on April 11, 1990 and by Respondent David Boyd on May 4, 1990.

The hearing was conducted in Los Angeles, California and lasted two 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. Respondent Boyd failed to disclose to Claimants that a simultaneous purchase and sale of National Total Income Fund and Kemper Option Income Fund, respectively, in similar dollar amounts, could not be effected, without an affirmative cash payment by Claimants. However, there were no proved damages to Claimants resulting from that failure, other than those that were compromised by the parties. Therefore, each and every claim of Claimants is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. In addition, Respondent is also assessed fees of \$400.00 representing forum fees, to be paid directly to the National Association of Securities Dealers.

### OTHER ISSUES

Prior to the hearing, Respondents filed a Motion to Dismiss, alleging that each claim is barred by the applicable statute of limitations and therefore the entire Statement of Claim should be dismissed. Said motion was renewed at the hearing, and was denied. Additionally, at the conclusion of Claimants' presentation of evidence, Respondents raised a motion for a directed verdict. Said motion was denied.

Arbitrator(s) Signature

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Gordon C. Stubbs

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