

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

W. Nick Tune

90-00647

Name of Respondents

Shearson Lehman Brothers, Inc. and
Mark Scritchfield

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 5, 1990, W. Nick Tune ("Claimant") alleged that Mark Scritchfield ("Scritchfield") while employed by Shearson Lehman Hutton, Inc. ("Shearson") committed acts of misrepresentation in inducing the purchase of speculative stocks and that he was unsuitable for the investment in the speculative stocks. Claimant further alleged violations of Federal and State Securities Laws and common law breach of contract.

In its Answer filed with the NASD on or about May 4, 1990, Respondent Shearson denied the allegations against it. Shearson specifically stated that the claimant had substantial experience trading securities prior to opening his three accounts with Shearson. Shearson asserted the following affirmative defenses: the claim failed to state a claim upon which relief can be granted; the claimant ratified the transactions; the claims are barred by the doctrines of waiver and estoppel; negligence; the claims are barred by the statutes of limitations and laches; and failure to mitigate.

In his Answer filed with the NASD on or about January 30, 1991, Respondent Scritchfield denied the allegations set forth in the Statement of Claim. Scritchfield specifically denied that he gave any guarantees to claimant and that he made any misrepresentations with respect to the transactions which occurred in the claimants account. Scritchfield further stated that the investment in TUNK was suitable for the claimant in light of the claimant's investment experience and objectives.

RELIEF REQUESTED

Claimant requested an award in the amount of \$81,541.63 plus interest, costs and attorneys fees.

Respondent Shearson requested that the Statement of Claim be dismissed and that it be awarded its costs.

Respondent Scritchfield requested that the Statement of Claim be dismissed and that he be awarded his costs and expenses.

PROCEDURAL MATTERS

On Wednesday, January 23, 1991 a prehearing conference lasting one (1) session was conducted and presided over by the Chairman of the Panel.

On Tuesday, February 5, 1991 and Wednesday, February 6, 1991 in Nashville, Tennessee during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 22, 1990 by Claimant W. Nick Tune on April 25, 1990 by William A. Hohauser on behalf of Respondent Shearson Lehman Hutton, Inc.; and on January 21, 1991 by Respondent Mark C. Scritchfield.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Shearson Lehman Hutton, Inc. and Mark Scritchfield shall be and hereby are jointly and severally liable for and shall pay to the Claimant W. Nick Tune the sum of Twenty Thousand Dollars (\$20,000.00);
2. No interest is awarded on the above stated sum;
3. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter not specifically enumerated herein; and
4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimant W. Nick Tune. Claimant shall pay to the NASD the sum of

\$900.00 and Respondents Shearson Lehman Hutton, Inc. and Mark Scritchfield shall be jointly and severally liable for and shall pay to the NASD the sum of \$1,250.00 as forum fees.

Dated:

29 FEB 1991

Thomas A. Harris, Esq.
Presiding Chair

Donald E. Rutledge
Donald E. Rutledge

James T. Ritt, Esq.
Industry Arbitrator

\$900.00 and Respondents Shearson Lehman Hutton, Inc. and Mark Scritchfield shall be jointly and severally liable for and shall pay to the NASD the sum of \$1,250.00 as forum fees.

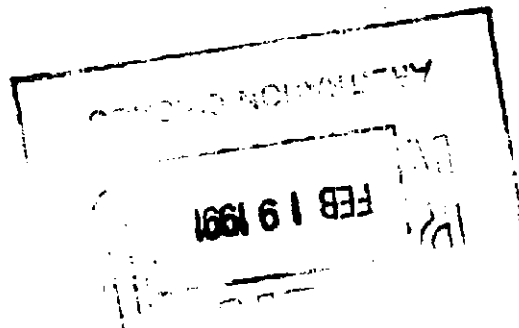
Dated:

Thomas A. Harris, Esq.
Presiding Chair

Donald E. Rutledge

2-12-91

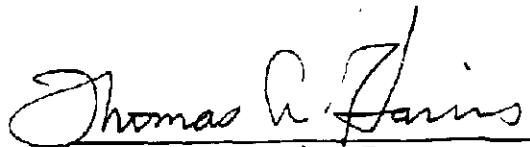
James T. Ritt
James T. Ritt, Esq.
Industry Arbitrator



\$900.00 and Respondents Shearson Lehman Hutton, Inc. and Mark Scritchfield shall be jointly and severally liable for and shall pay to the NASD the sum of \$1,250.00 as forum fees.

Dated:

Feb. 12, 1991



Thomas A. Harris, Esq.
Presiding Chair

Donald E. Rutledge

James T. Ritt, Esq.
Industry Arbitrator