

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Thomas Bongard )

) Case No. 90-00751

Name of Respondent(s) )

Shearson Lehman Hutton, Inc. )  
Robert Farrell )

Heard before the Arbitration Panel:

Mark C. Perry, Esq.  
Perry N. Miller  
Eduardo J. Palacio, Esq.

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Public

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 13, 1990. Claimant, Thomas Bongard ("Bongard"), alleged that Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Robert Farrell ("Farrell"), were liable for: violating Section 10b-5 of the Securities Exchange Act; violating Chapter 517 of the Florida Statutes; misrepresentation; breach of contract; breach of fiduciary duty; violating the NASD Rules of Fair Practice; negligence; failure to follow Claimant's instructions; fraud and deceit; unauthorized purchase of options; recommending unsuitable options investments; misrepresenting that Farrell had special knowledge and that a profit was guaranteed; and inducing Claimant into purchasing stocks and options which were unsuitable in light of Claimant's stated investment objectives.

In a Statement of Answer filed with the NASD on March 22, 1990, Respondents alleged that: Farrell did not recommend that Claimant purchase a large quantity of calls in ceratin stock; Claimant acted on rumors of a takeover in purchasing those calls; Claimant understood the risks involved in options; and, otherwise denied that Farrell's recommendations were based on inside information. Respondents asserted the affirmative defenses of: failure to state a claim; assumption of risk; the damages were caused by market conditions; Claimant is in pari delicto with Respondents to the extent he traded on inside information; ratification; Claimant was suitable for the transactions and was a sophisticated investor; Respondents did not breach any duties; and punitive damages are not available in this proceeding and are unconstitutional.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$613,793.30 plus interest, attorney's fees and costs.

Respondents requested dismissal of the claim plus costs.

### AWARD

On December 17, 18, 19 and 20, 1990, in Fort Lauderdale, Florida, during a hearing lasting seven sessions, with three pre-hearing conferences on October 2, December 5 and 6 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on March 1, 1990 and signed by Harry Walters on behalf of Respondent, Shearson, on May 16, 1990 and not signed by Respondent, Farrell, as required pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"), Respondent Farrell, being a person associated with an NASD member firm, Shearson Lehman Hutton, Inc., at the time this controversy arose.

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. Respondents, Shearson and Farrell, are found liable, jointly and severally, and shall pay to Claimant the amount of \$245,517.00.
3. Claimant's requests for attorney's fees, costs, punitive damages and prejudgment interest are denied.

### FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,000.00 (ten sessions x \$1,000.00 per session including three pre-hearing conferences on October 2, December 5 and 6, 1990). Claimant is hereby assessed \$6,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof. Respondents, Shearson and Farrell, are hereby assessed \$4,000.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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

OTHER ISSUES

None.

Concurring Arbitrator(s) Signature

/s/  
Mark C. Perry, Esq.

/s/  
Penny N. Miller

/s/  
Eduardo J. Palacio, Esq.

Date of Decision: February 20, 1991