

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Allan N. & Alene J. Sheppard

Name of Respondents

Shearson Lehman Hutton, Inc.
Boyd L. Embrey

90-00761

ARBITRATION-CHICAGO

REPRESENTATION

Allan N. Sheppard and Alene J. Sheppard were represented by Cynthia A. Deiters, Esq. of Green, Hoffmann & Dankenbring, St. Louis, Missouri.

Shearson Lehman Hutton, Inc. and Boyd L. Embrey were represented by Thomas M. Newmark, Esq. of Gallop, Johnson & Newman, St. Louis, Missouri.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 13, 1990, Allan N. Sheppard ("Claimant") alleged that Boyd L. Embrey ("Embrey"), a registered representative of Shearson Lehman Hutton, Inc. ("Shearson") purchased the wrong Wyse Technology, Inc. bond for his account.

In their joint Statement of Answer filed with the NASD on or about June 20, 1990, Respondents Shearson and Embrey (collectively referred to as "Respondents") stated that neither Claimant nor Embrey knew that Wyse Technology, Inc. and issued a bond with a put or redemption feature. Respondents further stated that because of Claimant's familiarity with Wyse Technology, Claimant's interest in bond investments and his extensive experience investing in sophisticated financial instruments, Claimant decided to purchase the Wyse bond. Respondents asserted the following affirmative defenses: ratification, waiver, the doctrines of laches and estoppel.

RELIEF REQUESTED

Claimant requested that the panel order that the transactions in dispute be rescinded.

Respondents requested that the request to rescind be denied and that they award them their reasonable attorneys fees and costs.

PROCEDURAL MATTERS

On Thursday, June 13, 1991 in St. Louis, Missouri during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 23, 1990 by Claimant Allan N. Sheppard, on May 18, 1990 by William A. Hohauser on behalf of Respondent Shearson Lehman Hutton, Inc. and on June 19, 1990 by Respondent Boyd L. Embrey.

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

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Shearson is liable for and shall pay to Claimant the sum of Six Thousand Five Hundred Dollars and No Cents (\$6500.00);
2. Embrey is liable for and shall pay to Claimant the sum of Three Hundred Dollars and No Cents (\$300.00);
3. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and
4. Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the claim filing fee and hearing session deposit in the amount of \$550.00. Claimant shall pay an additional \$200.00 and Shearson is assessed additional forum fees in the amount of \$750.00.

By the Panel


Dated: _____

David Oetting, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

Carl O. Trautmann
Public Arbitrator

Dated: 7/12/91



Raymond A. Moore
Industry Arbitrator

PROCEDURAL MATTERS

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By the Panel

Dated: 7-11-91

David Oetting
David Oetting, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

Carl O. Trautmann
Carl O. Trautmann
Public Arbitrator

Dated: _____

Raymond A. Moore
Raymond A. Moore
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By the Panel

Dated: _____

David Oetting, Esq.
Presiding Chair
Public Arbitrator

Dated: July 12, 1991

Carl O. Trautmann
Carl O. Trautmann
Public Arbitrator

Dated: _____

Raymond A. Moore
Industry Arbitrator