

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Clifford Altfeld & R. Lyn Lewis,
Alan L. Stein & Terry S. Holpert

90-00847

Name of Respondent(s)

Shearson Lehman Hutton, Inc.

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 21, 1990, Claimants Clifford B. Altfeld, R. Lyn Lewis, Alan L. Stein, and Terry S. Holpert (collectively "Claimants") asserted that Respondent Shearson Lehman Hutton, Inc. ("Respondent") violated Rule 10b-5, Section 10(B) and Section 20(a) of the Securities Exchange Act of 1934. Claimants also alleged that Respondent violated the Arizona Consumer Fraud Act, breached fiduciary duties owed to Claimants and violated duties of good faith and fair dealing under Arizona common law. Claimants alleged that they informed their account representative of their desire for no more than moderate risk in their investments, their limited net worth and limited investment experience. Claimants alleged that their account representative recommended that Claimants acquire Western Savings Subordinated Capital Notes (the "bonds") in the amount of \$300,000 on margin. Claimants alleged that this investment was unsuitable in light of Claimant's experience, investment objectives and financial wherewithal. Claimants alleged that the risks attendant to the unsuitable nature of the acquisition were not disclosed, the status of the market for the securities was not disclosed and the actual performance was not disclosed or misrepresented.

In a Statement of Answer filed with the NASD on or about May 29, 1990, Respondent denied Claimant's allegations and further denied that it was liable to Claimants for any damages. Respondent alleged that the Claimants were suitable for the bond transactions, were supplied with proper information and were aware of the risks. Respondent also denied that the Claimant's accounts were mishandled or that they were given any improper information about the bonds. Respondents asserted certain affirmative defenses including but not limited to ratification, waiver, the claims were time barred by applicable status of limitation and the claim failed to state a cause of action upon which relief can be granted.

RELIEF REQUESTED

Claimants requested compensatory damages for losses sustained including lost interest and appreciation in excess of \$250,000, punitive damages and costs. Respondent requested dismissal of the claim in all respects and an

assessment of costs against Claimant.

PROCEDURAL MATTERS

The panel convened two pre-hearing conferences. These were held on January 11, 1991 and January 14, 1991. The panel made rulings on discovery and on Shearson's motion to dismiss R. Lyn Lewis as a Claimant. The panel denied Shearson's motion to dismiss R. Lyn Lewis and the matter was set for hearing on February 28, 1991 and March 1, 1991.

AWARD

On February 28 and March 1, 1991 in Scottsdale Arizona, 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 19, 1990 by Claimants Clifford Altfeld and R. Lyn Lewis, on February 20, 1990 by Claimants Alan Stein and Terry Holpert, and on May 23, 1990 by Joseph C. Pickard on behalf of Respondent Shearson Lehman Hutton, Inc.

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 originals remain on file with the NASD.

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. The claims asserted by Claimants against Shearson shall be and are hereby dismissed in all respects;
2. The parties shall each bear their respective costs, expenses, and attorney's fees incurred in this matter; and
3. 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 \$750.00 previously deposited with the NASD by the Claimants. Shearson is assessed additional forum fees of \$3,750 which is payable to the NASD.

Dated:

March 1, 1991

s/ Robert Williams, Jr., Esq.
Presiding Chair

March 1, 1991

s/ Glenn Rosenthal, Esq.

March 1, 1991

s/ Peter Kay
Industry Arbitrator