

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	)	
Jean McNabb	)	
vs.	)	
Shearson Lehman Hutton	)	
and Dennis Schwary	)	
Claimant	)	
Respondents	)	
	)	AWARD
	)	NASD # 90-01132

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 20, 1990. Claimant alleged that Respondents breached their fiduciary duty in recommending securities that were not suitable to her stated investment objectives of safety and income, including transactions in speculative common stocks and the purchase of two limited partnerships. Claimant further alleged that Respondents effected securities transactions in her account without her prior consent.

Respondent denied the allegations and maintained that the investments were suitable and appropriate for Claimant's financial means and investment objective of appreciation with safety, speculation, and income with safety, at the time they were recommended to her. Respondents further maintained that each transaction was discussed with and authorized by Claimant prior to its execution and that Claimant did not complain of any aspect of her account until she began to incur losses.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended at the hearing, of \$32,714.38 for losses incurred in stock and option transactions; rescission of the Shearson Radisson Partners Limited Partnership and the Silver Screen Partners IV limited partnership investments of \$25,000.00 and \$10,000.00 respectively; interest; attorneys fees and costs; and unspecified punitive damages.

Respondents requested dismissal of the claim in its entirety and costs.

DAMAGES AND RELIEF AWARDED

On November 28, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on April 5, 1990. Respondents are subject to the jurisdiction of this arbitration pursuant to Sections 1 and 12 of the Code of Arbitration Procedure and

verbally advised the Presiding Arbitrators on November 28, 1990 that they voluntarily submitted the matter in controversy to this forum. The hearing was conducted in Los Angeles, California and lasted two (2) 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 as follows:

1. Respondent Shearson Lehman Hutton is directed to rescind to Claimant the purchase price of the Shearson Radisson Partners LP and the Silver Screen IV LP in the amount of \$25,000.00 and \$10,000.00, respectively, and Claimant is directed to tender her certificates in these investments to Shearson Lehman Hutton as well as all interest, dividends, and distributions received in connection with the limited partnerships within 30 days of the service of this award.
2. Claimant is further awarded the sum of Five Thousand Dollars and Zero Cents (\$5,000.00) as and for interest assessed against Respondent Shearson Lehman Hutton solely.
3. All other claims are denied.
4. The parties shall each bear their respective costs including attorneys' fees.
5. In accordance with Section 43 of the NASD Code of Arbitration Procedure:
  - a) The NASD shall retain the \$500.00 filing fee previously deposited by Claimant; and
  - b) The Respondent are jointly and severally assessed the sum of \$500.00 representing forum fees to be paid to the NASD directly.

OTHER ISSUES

The parties stipulated to the execution and service of the award in counterpart copies.

ARBITRATORS CONCURRING

DATE SERVED: 12/31/90

Gordon C. Stubbs  
Gordon C. Stubbs