

Arbitration

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Cheryl Petrulis )

Case No. 90-01186 )

Name of Respondent(s) )

Shearson Lehman Hutton, Inc. )

Desmond Judge )

Thomas Vietzke )

Heard before the members of the Arbitration Panel:

James R. Kennedy, Jr., Esq.

Public

Richard J. Jones, III, Esq.

Public

Randall T. Stack

Industry

REPRESENTATION

Claimant, Cheryl Petrulis ("Petrulis"), was represented by William L. Lyman, Esq. of William L. Lyman, P.A.

Respondents, Shearson Lehman Hutton ("Shearson") Desmond Judge ("Judge") and Thomas Vietzke ("Vietzke"), were represented by Linda Yarden, Esq. of Shearson Lehman Hutton, Inc.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 16, 1990. Claimant alleged that Respondents were liable for: violations of the Florida Security and Investor Protection Act; common law fraud; breach of fiduciary duty; negligence; and, civil theft. Claimant alleged that: Respondent, Judge, failed to inform her of the risks of trading in options, limited partnerships and junk bonds or of the risks of trading on margin; such trading was unsuitable for Claimant in light of her investment objectives of growth with safety; Judge withdrew funds from the account without Claimant's authorization; and, otherwise acted in his own interest to increase commissions.

Respondents filed a Statement of Answer with the NASD on August 13, 1990. Respondents denied all allegations of wrongdoing and alleged that: Claimant was suitable for the investments; Claimant was informed of the risks of options trading; the trades were in accordance with Claimant's investment objectives; the level of trading was not excessive; all trades were authorized; Claimant authorized the use of margin; no misrepresentations were made; and, Claimant never objected to the trades.

Respondents alleged the affirmative defenses of: failure to state a claim; waiver; estoppel; laches; ratification; acquiescence; compliance with all applicable rules and regulations; and good faith.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$265,727.00, interest, punitive damages, treble damages, attorney's fees and costs.

Respondents requested dismissal of the claim plus costs and attorney's fees.

#### AWARD

On August 14, 15, and September 11, 12 and 13, 1991, in Tampa, Florida during hearings lasting 11 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Petrulis, on April 16, 1990 and not signed by Respondents, Shearson, Judge or Vietzke, as required by Sections 12 and 25 of the Code. Respondent, Shearson being an NASD member firm and Respondents, Judge and Vietzke being persons associated with an NASD member firm at the time this controversy arose.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned 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. Respondent, Vietzke, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondents, Shearson and Judge, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$124,000.00, plus interest at the legal rate of 12% per annum in the amount of \$23,600.00, for a total due to the Claimant of \$147,600.00.
4. Respondent, Shearson, is also found liable and shall pay to the Claimant the further amount of \$20,000.00 for attorney's fees pursuant to Section 517 of the Florida Statute and the Panel's authority under the Federal Arbitration Act and the case law interpreting that Act.

5. Respondent, Shearson, is also found liable and shall pay to the Claimant the further amount of \$3,661.26 for costs. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

6. Claimant's request for treble damages is denied.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$11,300.00 (1 pre-hearing conference x \$300.00 plus 11 sessions x \$1,000.00 per session). Respondent, Shearson, is hereby assessed \$11,300.00 plus the \$250.00 non-refundable filing fee. Shearson shall pay to the Claimant \$1,000.00 of that assessment as a refund of the filing fee which Claimant had previously deposited and shall pay to the National Association of Securities Dealers, Inc. the balance of \$10,550.00.

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

#### OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/  
James R. Kennedy, Jr., Esq.

/s/  
Richard J. Jones, III, Esq.

/s/  
Randall T. Stack

Date of Decision: October 30, 1991