

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Josephine Powell

90-01218

Name of Respondents

E.F. Hutton & Company, Inc.
Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant Josephine Powell ("Claimant"): John Connolly, a sole practitioner.

For Respondents E.F. Hutton & Company, Inc. and Shearson Lehman Brothers, Inc., Successor to E.F. Hutton & Company, Inc., ("Shearson"): Charles R. Mills, of Lord Day et al.

CASE INFORMATION

Statement of Claim filed: this document was not dated; however, it was received by the NASD on April 30, 1990.

Amended Statement of Claim filed: December 19, 1990.

Amended Statement of Claim filed: May 27, 1991.

Motion to Strike Respondents' Answer to Amended Statement of Claim filed: July 20, 1991.

Motion to Strike Exhibit C to Respondents' Answer to Amended Statement of Claim filed: July 20, 1991.

Claimant's Submission Agreement signed on: March 24, 1990.

Statement of Answer filed by Respondents on: June 8, 1990.

Respondents' Answer to the Amended Statement of Claim filed: July 15, 1991.

Supplement to Answer of Respondents to the Amended Statement of Claim filed: July 18, 1991.

Respondents' Response to Claimant's Motion to Strike Respondents' Answer to Amended Statement of Claim filed: September 18, 1991.

Respondents' Response to Claimant's Motion to Strike Exhibit C to Respondents' Answer to Amended Statement of Claim filed: September 18, 1991.

Respondent Shearson's (Successor to E.F. Hutton & Company, Inc.) Submission Agreement signed on: June 13, 1990.

HEARING INFORMATION

Pre-Hearing Conference: February 13, 1991/2 sessions/1 arbitrator

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July 22, 1991/1 session/1 arbitrator

Hearing Dates/Sessions: March 10, 1992/2 sessions
March 11, 1992/2 sessions
March 12, 1992/2 sessions
March 26, 1992/2 sessions
March 27, 1992/2 sessions
April 29, 1992/2 sessions
April 30, 1992/2 sessions

Hearing Location: Richmond, VA.

CASE SUMMARY

Claimant alleged Hutton intentionally misled and deceived her into purchasing and selling securities. Claimant alleged Respondents made untrue statements of material fact and omitted material facts including soliciting her to open an options/margin account when Darrel S. Landon ("Landon"), her account representative, failed to disclose this account was for trading in options on margin, compared this account to her existing blue chip stock and bond investments, and presented account disclosure documents in a manner he knew she would not read. Claimant alleged Respondents concealed false statements of material fact about her objectives and trading activity level; concealed the type of securities that would be traded within the options/margin account, as well as the arbitration provisions; omitted the twenty-five thousand dollar restriction on total risk of loss that had been authorized by Claimant for the options/margin account; concealed that the securities were purchased and sold on margin; stated that the trading in the options/margin account was at a profit, while knowing the statements were false; churned her account; and recommended and maintained her investments in options and on margin while knowing they were unsuitable for her. Claimant alleged Respondents breached an agreement, misrepresented material terms, and defrauded her regarding the purchase of a Hutton life insurance policy. Finally, Claimant alleged Respondents violated the RICO statute.

Respondents alleged Claimant is attempting to recoup the losses she incurred as a result of the Stock Market Crash on October 19, 1987. Respondents maintained they cannot be held liable for losses caused by the Crash; at the time of the Crash, Claimant knew she held options, authorized these transactions, and knew options entailed risk of loss. Respondents asserted options trading and other investments were suitable for Claimant and she was aware of the risks of those transactions. Respondents denied they engaged in any misrepresentations or omissions of material fact, or that they churned Claimant's accounts. Finally, Respondents maintained Claimant has failed to bring her claim under the RICO statute within the time period required.

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RELIEF REQUESTED

Claimants requested: actual damages in excess of \$150,000.00; treble damages; punitive damages in the amount of \$2,000,000.00; pre and post judgment interest; attorneys' fees; and costs.

Respondents requested: the Statement of Claim be dismissed; costs; expenses; and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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.

- 1- Claimant's Motions to Strike Respondents' Answer and to Strike Exhibit C to the Amended Statement of Claim are denied;
- 2- This arbitration panel has acknowledged and accepted that Respondent Shearson is the successor to Respondent Hutton. Therefore, all issues decided in this matter pertaining to Respondent Shearson are applicable to Respondent Hutton and all issues decided in this matter pertaining to Respondent Hutton are applicable to Respondent Shearson.

AWARD

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

- 1- Respondent Shearson (successor to Respondent Hutton) is liable and shall pay to Claimant the sum of \$45,000.00;
- 2- All other claims are denied in their entirety;
- 3- Each party shall bear its own expenses, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$250.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fees are assessed.

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3 pre-hearing sessions X \$300.00 = \$900.00

14 hearing sessions X \$1,000.00 = \$14,000.00

Forum fees Assessed Against:

2- Claimant, in the amount \$7,450.00. The NASD shall retain the \$800.00 hearing session deposit previously deposited by Claimant. Therefore, the amount due and owing equals \$6,650.00;

3- Respondent, in the amount of \$7,450.00.

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

Concurring Arbitrators' Signatures


B. Randolph Boyd, Public Arbitrator

Date of Decision: June 10, 1992

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Concurring Arbitrators' Signatures


Jack Costello/Industry Arbitrator

Date of Decision: June 10, 1992

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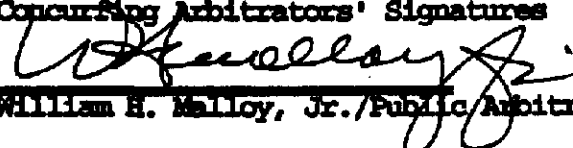
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Concurring Arbitrators' Signatures


William H. Malloy, Jr./Public Arbitrator

Date of Decision: June 10, 1992