

N.A.S.D. BOARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Oliver E. Smidt and Madeline L. Smidt
Claimants

vs.

Shearson Lehman Hutton, Inc.
Respondent

30-01418

REPRESENTATION OF PARTIES

Oliver E. Smidt and Madeline L. Smidt were represented by Michael Salcido, Esq., of Burch & Cracchiolo, P.A., Phoenix, Arizona.

Shearson Lehman Hutton, Inc. was represented by Gerald Maltz, Esq., of Miller, Pitt & McAnally, P.C., Tucson, Arizona.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 5, 1990, Oliver E. Smidt and Madeline L. Smidt ("Claimants") alleged that Shearson Lehman Hutton, Inc. (n/k/a Shearson Lehman Brothers, Inc.) ("Respondent"), committed securities fraud, made unsuitable recommendations, and made fraudulent or negligent representations to the Claimants in connection with the purchase of Western Savings and Loan Association Subordinated Capital Notes. Claimants also alleged that Respondent committed fraud in the sale of securities within or from Arizona, which constitutes racketeering under A.R.S. 13-2301 et seq. ("Arizona Rico").

In its Answer filed with the NASD on or about August 28, 1990, Respondent stated that financial Consultant Kenn Hugos ("Hugos") had informed Claimants of all available information regarding the Western Savings and Loan Association Subordinated Capital Note prior to the purchase and throughout the period in question. Respondent stated that Hugos did not represent the

notes as safe low risk and non-speculative investments, that claimants were aware of and assumed the risks of the high yield bond purchases, had the benefit of all available public information and made their own investment decisions in their account. Respondent asserted the following affirmative defenses: the statement of claims fails to state a cause of action upon which relief can be granted; failure to mitigate; waiver; and the claim is time barred.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the amount of \$115,241.32, treble damages pursuant to A.R.S. 13-2314(A), punitive damages, attorneys fees and costs, and pre and post judgment interest.

Respondent requested that the Statement of Claim be dismissed and that costs be assessed against Claimants.

PROCEDURAL MATTERS

On Thursday, June 6, 1991, Friday June 7, 1991 and Wednesday, June 12, 1991 in Scottsdale, Arizona during a hearing lasting a total of five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 1, 1990 by Claimants Oliver E. and Madeline L. Smidt on August 24, 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 confirmed copies of the award while the original(s) remain on file with the NASD.

AWARD

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. Respondent Shearson Lehman Brothers, Inc. f/n/a Shearson Lehman Hutton, Inc. shall be and hereby is liable for and shall pay to the Claimants Oliver E. Smidt and Madeline L. Smidt the sum of Thirty Thousand Dollars (\$30,000.00) which sum includes costs and attorneys fees;
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of June 5, 1990 to and inclusive of the date this award is paid in full;
3. Respondent Shearson Lehman Brothers, Inc. f/n/a Shearson Lehman Hutton, Inc. shall bear its own costs, expenses and attorneys 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 fees deposit in the amount of \$550.00 previously deposited with the NASD by the Claimants and Respondent shall pay to the NASD the sum of \$500 as forum fees.

Dated: _____

Irving Lowe, Esq.
Presiding Chair
Public Arbitrator

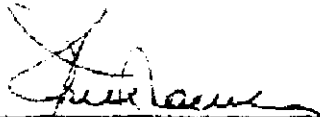
Dated: _____

James Sullivan
Industry Arbitrator

Dated: 6/20/91

Douglas E. Smith
Douglas E. Smith
Public Arbitrator

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 \$550.00 previously deposited with the NASD by the Claimants and Respondent shall pay to the NASD the sum of \$3250.00 as forum fees.

Dated: 6-28-91
Irving Lowe, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

James Sullivan
Industry Arbitrator

Dated: _____

Douglas E. Smith
Public Arbitrator

Pursuant to Section 4101 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$550.00 previously deposited with the NASD by the Claimants and Respondent shall pay to the NASD the sum of \$3250.00 as forum fees.

Dated: _____

Irving Lowe, Esq.
Presiding Chair
Public Arbitrator

Dated: 6-28-91

James Sullivan
James Sullivan
Industry Arbitrator

Dated: _____

Douglas E. Smith
Public Arbitrator