

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Barbara Haskin Niven Trust

By Janet Swords and

Nicholas Niven, Trustees

Claimant

vs.

Shearson Lehman Hutton, Inc.

Leigh Poland

Respondents

AWARD

NASD NO. 90-01485

REPRESENTATION

Claimant was represented by Douglas W. Oldfield, Esq. of Carmel, California. Respondents were represented by Harry T. Walters, Esq. of Shearson Lehman Brothers, New York, New York.

SUMMARY OF ISSUES

Claimant alleged lack of suitability, breach of fiduciary duty, intentional negligence, churning and failure to supervise with respect to investments in certain limited partnerships common stocks, uncovered call options, and other securities made by Barbara Niven during her lifetime.

Respondents denied all allegations of wrongdoing and further denied any liability to Claimant. Respondents asserted that the Statement of Claim failed to state a claim upon which relief can be granted, that Barbara Niven was fully informed of the risks of all investments prior to investment, that certain claims are barred by res judicata, collateral estoppel, prior pending action and/or settlement and release, and that all investments were suitable for Barbara Niven given her financial circumstances and investment objectives.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of approximately \$855,500.00 for rescission of all limited partnership investments except Jones

Cable, compensatory damages of approximately \$463,954.00, plus interest on these principal sums, and punitive damages of \$5,000,000.00.

Respondents requested dismissal of all claims and an award of costs of arbitration.

#### PROCEDURAL SUMMARY

This claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on June 4, 1990. Pre-hearing telephone conferences were held on January 7, 1991 and May 29, 1991, each lasting one session.

On June 11, 12 and 13, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Janet Swords and Nicholas Niven, the co-trustees of Claimant Trust, on May 10, 1990 and May 21, 1991, respectively, by an authorized representative of Shearson Lehman on June 11, 1991 and by Leigh Poland on June 11, 1991. The hearing was conducted in San Francisco, California and lasted six sessions.

#### DAMAGES AND RELIEF AWARDED

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:

I. Claimants have established respondent Shearson Lehman Hutton's failure to supervise respondent Leigh Poland in the management of the Niven accounts, with special regard to the following limited partnerships:

- Participating Development Fund '86
- Shearson Union Square Associates
- Shearson Radisson Partners
- Federal Insured Mortgage Investors
- Motel 6 Limited Partnership

II. Claimants have established the unsuitability for the Niven accounts of the limited partnerships listed above as well as the following transactions:

- Rollover of SEM Berlin to Shearson Multi Opportunity Portfolio, Putnam Premier Income Trust and Franklin California Tax Free Fund.
- Swap of Franklin for U.S. Nuveen TEBF MLT ST #21M.

- Purchase of Scientific Measurement Systems.
- Purchase of Gillette
- Purchase of Times Mirror uncovered call options.

Accordingly,

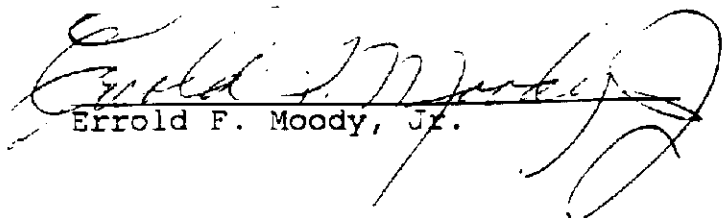
1. Respondent Shearson Lehman Hutton is liable for and shall pay to Claimant the sum of \$309,650.00 inclusive of interest.
2. Respondent Leigh Poland is liable for and shall pay to Claimant the sum of \$61,750.00, inclusive of interest.
3. The claim for punitive damages is dismissed.
4. The parties shall each bear their respective costs including attorneys' fees.
5. In accordance with Section 43 of the NASD Code of Arbitration Procedure, (amended June 18, 1990) the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant. In addition, Respondent Shearson Lehman Hutton is assessed forum fees of \$7,000.00 payable to the NASD, Inc.

#### OTHER ISSUES

On June 11, 1991, before the commencement of the evidentiary hearing, a Motion for Partial Summary Judgment was made by counsel for Respondents with respect to the following limited partnership investments: Shearson Union Square Associates, Shearson California Radisson Plaza Partners, Participating Development Fund 86, and Damson Oil/Gas Income 82-4. The panel granted the Motion with respect to Damson Oil/Gas Income 82-4 only.

#### ARBITRATORS CONCURRING

DATE SERVED: 07/16/91

  
Errol F. Moody, Jr.