

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Gerald Simini and
Anna Paolucci

v

NASD Arbitration
No. 90-01589

Dean Witter Reynolds, Inc.
Shearson Lehman Hutton, Inc.
Timothy Stockton

REPRESENTATION

For Claimant: Michael W. King, Esq. - Demler, Armstrong & Rowland

For Respondent: Dean Witter Reynolds, Inc. - Curt H. Mueller, Esq.
Shearson Lehman Hutton, Inc. - Linda Yarden, Esq.
No Appearance by Respondent - Timothy T. Stockton

CASE INFORMATION

Statement of Claim filed: June 5, 1990

Claimants' Submission Agreement signed on: May 22, 1990

Statement of Answer filed by Respondent, Dean Witter Reynolds Inc. on: July 30, 1990

Statement of Answer filed by Respondent, Shearson Lehman Hutton, Inc. on: August 13, 1990

No Answer or Submission Agreement filed by Respondent, Timothy Stockton

HEARING INFORMATION

Pre-Hearing Conference : None

Hearing Dates/Sessions: February 4, 1992 - Two Sessions
February 5, 1992 - Two Sessions
Four Sessions Total

Hearing Location: San Diego, California

CASE SUMMARY

Claimants, Gerald Simini and Anna Paolucci (Simini) alleged that Respondent, Timothy T. Stockton (Stockton), used his position as a financial advisor to gain complete control over Claimants' financial dealings. He made false statements regarding Claimants' investments and withheld information and documents regarding their investments, thereby preventing Claimants' from discovering their loss until December, 1988. In addition, Stockton made investments on Claimants' behalf which were not in

accordance with representations made and unsuitable in light of Claimants' needs ages and income status. Claimant also claims against Respondents, Shearson Lehman Hutton, Inc., and Dean Witter Reynolds, Inc., for negligently supervising Stockton when he was in their respective employ.

Respondent, Dean Witter Reynolds, Inc. (DWR), alleged that Gerald Simini opened an account with DWR in August, 1985 and closed the account nine months later, making a small profit. Claimant, Anna Paolucci, never had an account with Dean Witter Reynolds, Inc. and is therefore precluded from bringing any claims against DWR. It is also alleged that the transactions complained of were the result of private dealings between Stockton and the Claimants' made outside of financial dealings with DWR.

Respondent, Shearson Lehman Hutton, Inc., (SLH) alleged that, at all times during the existence of their account, Claimants had ample opportunity to discontinue the trading activity in the account if they were dissatisfied with it. Neither Claimant chose to do so. Claimants received all their monthly statements for the account and did not raise any objections to the activity. The Claimants ratified and confirmed all activity in their account by their continued course of trading activity. At all times, Claimants' account was handled properly and professionally and in accordance with the laws.

RELIEF REQUESTED

Claimants requested: Damages against Respondents in an amount in excess of \$390,000.00 representing the value of the annuities purchased on Claimants' behalf, reimbursement for losses and commissions paid on unauthorized and/or unsuitable transactions and costs incurred in connection with the finance and cure of default on Claimants' residence.

Respondent, Shearson Lehman Hutton, Inc. requested: Dismissal of the claim in its entirety, costs and attorneys' fees

Respondent, Dean Witter Reynolds, Inc, requested: Dismissal of the claim in its entirety, and costs.

OTHER ISSUES CONSIDERED AND 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 original(s) remain on file with the NASD.

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. Each and every claim of Claimants, Gerald Simini and Anna Paolucci against Respondent, Shearson Lehman Hutton, Inc., is dismissed.

