

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

John Barovich and Barovich Associates, Inc.

Claimants

and

90-01641

Shearson Lehman Hutton, Inc. and
Michael E. Watts

Respondents

REPRESENTATION OF PARTIES

Claimants were represented by Gary J. Ceriani, Esq. and Michael P. Cillo, Esq. of Davis & Ceriani, P. C., Denver, Colorado. Respondents were represented by Harry T. Walters, Esq. of Shearson Lehman Hutton, Inc., New York, New York.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 7, 1990, Claimants John Barovich and Barovich Associates, Inc. ("Claimants") alleged violations of the Montana Securities Act (fraud), violation of Section 10b of the Securities Exchange Act of 1934 and rule 10b-5 promulgated thereunder, breach of fiduciary duty, negligence and negligent supervision. These causes of action were alleged to have arisen out of the conduct of Respondents Shearson Lehman Hutton, Inc. ("Shearson") and Michael E. Watts ("Watts"). Claimants alleged that Watts while employed with Shearson engaged in numerous undiscussed, unauthorized and unsuitable options transactions in Claimants accounts from June of 1988 until May of 1989. Claimants alleged that Watts and Shearson misrepresented material facts including the fact that all funds contributed to Claimants' accounts would be subject to minimum risk due to Watts' expertise and skill in trading options and using spreads and straddles, Shearson would provide a large degree of supervision over Watts, that the option

trading scheme pursued by Shearson and Watts was suitable for Claimants and in accordance with his investment objectives and that no more than \$15,000 of Claimants' funds were at risk trading options. Additionally, Claimant alleged that Shearson and Watts failed to disclose material facts, including but not limited to, the fact that the trading was excessive and designed to secure large revenues for Shearson and Watts.

In a joint Statement of Answer filed with the NASD on August 12, 1990, Shearson and Watts alleged that Claimant was suitable to trade options as he had ten (10) years prior options trading experience and had substantial net worth. Shearson and Watts alleged that Claimant received all disclosures regarding the risks of equity options trading. Additionally, all trades were allegedly discussed with Claimant before execution and confirmations were given to Claimant. Shearson and Watts denied that Claimants' account was churned. Shearson and Watts asserted various affirmative defenses, including but not limited to ratification, laches, and any losses were caused in whole or part by the negligence, carelessness and culpable conduct of Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages for losses of \$140,000, commission and margin interest paid by Claimants, capital appreciation Claimants could have and should have earned, interest, costs, attorney's fees, expert witness fees, filing fees and appropriate exemplary damages. Shearson and Watts requested dismissal of the claim in its entirety and an award of costs and attorneys fees.

PROCEDURAL MATTERS

On May 30, 1991 and May 31, 1991 in Denver, Colorado, during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 1, 1990 by Claimant John Barovich, individually and as president of John Barovich and Associates, Inc.

Respondents Shearson and Watts did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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

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. Shearson is liable for and shall pay to the Claimants the sum of \$70,000.00;

2. Watts is liable for and shall pay to Claimants the sum of \$16,000.00;

3. No interest is assessed on the monies awarded to the Claimants;

4. The parties shall each bear their own costs, expenses and attorneys' fees incurred in this matter;

5. No exemplary damages are awarded Claimants and this claim is specifically dismissed; and

6. 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 \$750.00 previously deposited with the NASD by the Claimant. Shearson is assessed and shall pay additional forum fees to the NASD in the amount of \$2250.00 and Claimant shall pay the NASD additional forum fees of \$200.00.

Dated:

July 22, 1991

July 1, 1991

July 3, 1991

Panel Members Concurring

/S/ William M. Pendleton

William M. Pendleton
Presiding Chair
Public Arbitrator

/S/ William A. Long, Esq.

William A. Long, Esq.
Public Arbitrator

/S/ Gerald K. Moore

Gerald K. Moore
Industry Arbitrator