

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES-DEALERS, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN

CLAIMANTS: FRANCIS G. AND CAROL G. SUTTON

NO. 90-01642

**RESPONDENTS: SHEARSON LEHMAN HUTTON, INC.
and RANDY NAUGLE**

SECTION 11.2

REPRESENTATION

For Claimants: Francis G. Sutton and Carol G. Sutton appeared pro se.

For Respondents: Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc., and Rodney Naugle were represented by Stephen H. Kupperman, Esq. and Linda R. Gallagher, Esq. of Stone, Pigman, Walther, Wittman & Hutchison, New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: June 11, 1990
Claimant's Submission Agreement signed: May 24, 1990 by Francis G. Sutton and on June 26, 1990 by Carol G. Sutton.

Statement of Answer filed by Respondent Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc. on August 20, 1990
Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed August 8, 1990 by William A. Hohaus

Statement of Answer filed by Respondent Rodney Naugle on October 15, 1990

Respondent Rodney Naugle's Submission Agreement signed on March 22, 1991

HEARING INFORMATION

Hearing Date/Sessions: September 4, 1991 for two (2) sessions

Hearing Location: New Orleans, Louisiana

CASE SUMMARY

Claimants, Francis G. Sutton and Carol G. Sutton ("Suttons") alleged that Respondent Rodney Naugle ("Naugle"), while employed by or acting as an agent for Respondent Shearson Lehman Hutton, Inc. ("Shearson"), fraudulently induced the Suttons into purchasing unsuitable investments in the Putnam High Income Mutual Fund, Colonial Mutual Fund, and Ginnie Mae Mutual Fund by misrepresenting the risks of the investments, the commissions paid to him, and that the Sutton's principal was safe as long as the Federal Government was in business and solvent. In addition, the Suttons alleged that Shearson failed to adequately supervise Naugle.

Respondents Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc., and Rodney Naugle denied the material allegations of the Statement of Claim, alleging that:

1. Naugle adequately and accurately described all facts and provided the Suttons with copies of the appropriate documentation;
2. The Suttons were sophisticated investors who understood the investments and made all decisions regarding investment of funds in their accounts; and
3. The Suttons received periodic reports, monthly statements and confirmation slips and failed to complain.

In addition, Shearson and Naugle asserted the following affirmative defenses:

1. The Statement of Claim fails to state a cause of action upon which relief can be granted;
2. The claim is barred by the applicable statute of limitations and/or by laches;
3. The claim is barred by the doctrines of waiver, ratification and/or estoppel;
4. The Suttons have received and continued to receive significant cash amounts each month from the investments resulting in a profit and not a loss on the investments; and
5. Alternatively, if loss has occurred, it was the result of the Suttons' actions or inactions and any assessment against Shearson or Naugle must be reduced by the proportion of fault by Claimants.

RELIEF REQUESTED

Claimants Francis G. Sutton and Carol G. Sutton requested an entry of an award against Respondents Shearson Lehman Hutton, Inc. and Rodney Naugle in the sum of \$25,000.00

Respondents Shearson Lehman Hutton, Inc. and Rodney Naugle requested that the Statement of Claim be dismissed and denied in its entirety.

AWARD

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

1. The Statement of Claim is hereby dismissed and denied in its entirety; and
2. The parties shall bear their own costs of arbitration, including attorneys' fees, if any, except for those specifically enumerated herein.

REASONS FOR AWARD

Factually, claimants assert that they were defrauded by the respondents into investing \$65,000 in three (3) government bond funds. It is the claimants' burden of proof in establishing that such fraud occurred.

After hearing the testimony of the claimants, as well as the testimony of Mr. Melancon, Francis G. Sutton, Jr., Roger Guedry, and Glen Muntz, as well as considering all of the documents, the undersigned arbitrator is of the opinion that claimants failed to establish that any such fraud occurred.

Weighing significantly in this decision was Mr. and Mrs. Sutton's own testimony that Mr. Naugle brought out several bond fund prospectuses, left those prospectuses with the claimants, and in no way pressured the claimants to invest in any or all of the proposed investment vehicles. Certainly, had Mr. Naugle intended in any way to defraud the Suttons, he would not have left the very prospectuses which clearly and unequivocally define the risks entailed in the investment, including the potential decline in principal value.

This is not a case of fraud. It may be, unfortunately, a case of misunderstanding. Every reward has its risks. The larger the

reward, the greater the risk. While not sophisticated investors, the Suttons certainly had an adequate opportunity to investigate the mechanisms of the proposed investments. They had all the documents available to them and Mr. Naugle answered all their questions. The fundamental problem stems from the distinction between the treasury notes and/or bonds which constitute the elements of the bond fund and are federally insured, as distinct from the fund itself which can and did fluctuate in value.

Thus, while a misunderstanding may have occurred, that misunderstanding does not rise to the level of fraud and, accordingly, the claimants have failed to sustain their burden of proof and an award must be directed accordingly.

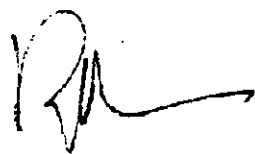
FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$100.00 and refund the hearing session deposit of \$300.00 previously deposited by the Claimants Francis G. Sutton and Carol G. Sutton. Respondent Shearson Lehman Hutton, Inc., now known as Shearson Lehman Brothers, Inc., is liable for and shall pay to the NASD forum fees in the sum of \$600.00.

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

BY THE ARBITRATOR



Robert A. Kutcher, Esq.
Presiding Public Arbitrator

DATED:

Sept 13, 1991

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