

N.A.S.D. FINAL ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Leo M. Colman

90-01666

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
E.F. Hutton & Co. Inc.

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Heard before:

Public/Industry

Murray I. Sommer  
Lawrence E. Goldberg  
Louis Green

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

REPRESENTATION

Claimant Leo M. Colman was represented by Lawrence R. Gelber, Esq. of Beigel & Sandler, Ltd. Respondents Shearson Lehman Hutton, Inc. and E.F. Hutton & Co., Inc. were represented by Casey Baum of Shearson Lehman Brothers, Inc.

CASE SUMMARY

Claimant in a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on June 11, 1990, alleged that Respondents committed fraud, breach of fiduciary duty, breach of contract, negligence, and failure to supervise in connection with a number of limited partnerships, including the following:

- 1) Kenai Partners 1980 Drilling Fund - Series 2
- 2) Kenai Partners 1980 Drilling Fund - Series 1
- 3) Kenai Partners Drilling Program - Series 1981-3
- 4) Nordrill Limited II; and,
- 5) Can Am Drilling Programs Ltd. Partnerships 1979-1982, 1979-1983, 1980-1981, 1980-1982, 1980-1984 and 1981-1982.

Claimant alleged that Respondents placed him into a series of unsuitable limited partnerships. Claimant alleged that Respondents breached their obligation of good faith and fair dealing and that Respondents violated the "know your customer" rules. Claimant further alleged that Respondents

engaged in a course of conduct motivated by greed for commissions. Claimant also alleged that Respondents conducted at least two acts violative of Racketeer Influence Corrupt Organization Act.

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Respondents did not file an answer; instead, they filed a Motion to Dismiss pursuant to the NASD Code of Arbitration Procedure Section 15. Respondents in their motion asserted that all claims alleged by the Claimant are time barred. Respondents maintained that Statutes of Limitation are irrelevant to a consideration of a Section 15 motion to dismiss; and, that compliance with Section 15 is a non-~~available~~<sup>fileable</sup> jurisdictional precondition to the presiding arbitrators subject matter jurisdiction to resolve the dispute alleged in Claimant's claim.

Claimants responded to the motion to dismiss and maintained that Respondents are incorrect in their interpretation of Section 15's six year filing requirement and maintained that there is no support for the proposition that Section 15 prohibits arbitration of claims that are viable in a court of law. Claimants maintained that NASD Section 15 was not intended to uniformly cut off Claimant's remedies before he has an opportunity to be apprised of his injuries or have his damages arise. Claimant asserted that a claim does not fall outside the six year period until six years from damages and that although the fraudulent conduct in this case began in 1980, the Claimant's right of action did not accrue until the Claimant had knowledge of the injury.

#### ORDER OF THE ARBITRATOR

On April 4, 1991, the undersigned arbitrators convened at the offices of the NASD in New York City, New York, and permitted Claimant and Respondent to fully orally argue Respondent's Motion to Dismiss. The arbitration panel having considered the pleadings, the motions and the oral arguments presented at the hearing have determined and hereby order as follows:

That pursuant to Section 15 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure entitled "Time Limitation on Submission", Respondents' motion to dismiss is granted and Claimant's claims are dismissed in their entirety.

#### FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant as costs of a single hearing session conducted in this matter on April 4, 1991.

ARBITRATORS CONCURRING

Murray I. Sommer  
MURRAY I. SOMMER

Lawrence E. Goldberg  
LAWRENCE E. GOLDBERG

Louis Green  
LOUIS GREEN

DATED: May , 1991