

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	x
A.M. Miller Tupker,	x
Claimant,	x
vs.	x CASE NO.
Shearson Lehman Hutton, Inc., and	x 90-01709
Neal Impellezeri,	x
Respondents.	x AWARD
	x
	x

CASE SUMMARY

Claimant, A.M. Miller Tupker ("Tupker") by and through her attorney-in-fact, R.J.J. Hiemstra ("Hiemstra"), alleged that Hiemstra instructed Respondent Neal Impellezeri ("Impellezeri"), then employed by Respondent Shearson Lehman Hutton, Inc. ("Shearson"), to sell all HPSC, Inc. shares in her account at not less than \$7.00 per share net of commissions, and to first use the proceeds to satisfy the entire margin debit in her account, and then to use any excess proceeds to purchase Southwest Airlines ("SWA") warrants. Tupker alleged that Impellezeri instead purchased the SWA warrants first, and then sold most of the HPSC at less than \$7.00 per share to satisfy the margin debt, all without Hiemstra's authorization.

Shearson and Impellezeri contended that Hiemstra fully authorized the purchase of the SWA warrants and never conditioned the purchase upon either the elimination of the total HPSC position or of the total debit balance in the account. Shearson and Impellezeri also contended that Hiemstra instructed the sale of the HPSC, but that he never said to sell at \$7.00 net of commissions.

RELIEF REQUESTED

Tupker requested actual damages of \$39,126.00, plus interest, costs and attorneys' fees. Shearson and Impellezeri requested dismissal of the Statement of Claim in its entirety.

AWARD

On April 26, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant A.M. Miller Tupker's Attorney-

in-Fact, R.J.J. Hiemstra, on April 26, 1990, by Respondent Shearson Lehman Hutton, Inc. on October 31, 1990, and by Respondent Neal Impellezeri on October 24, 1990. The initial claim was filed on June 15, 1990. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in New York City, NY, and consisted of two (2) hearing sessions. 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 for determination as follows:

1. Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the Claimant A.M. Miller Tupker the sum of Six Thousand Three Hundred Thirty Nine Dollars And No Cents (\$6,339.00), plus 6% interest from September 8, 1989 until the satisfaction of this Award or entry of judgment.
2. Respondent Neal Impellezeri be and hereby is liable and shall pay to the Claimant A.M. Miller Tupker the sum of Six Thousand Three Hundred Thirty Nine Dollars And No Cents (\$6,339.00), plus 6% interest from September 8, 1989 until the satisfaction of this Award or entry of judgment.
3. The parties each shall bear their respective costs, including attorneys' fees.

Forum Fees:

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited by the Claimant, and Neal Impellezeri be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of FOUR HUNDRED TWENTY DOLLARS AND NO CENTS (\$420.00), as costs of the two (2) hearing sessions conducted in this matter. In addition, Neal Impellezeri be and hereby is liable and shall pay to the Claimant the sum Five Hundred Dollars And No Cents (\$500.00), to offset the filing fee previously deposited by the Claimant.

CONCURRING ARBITRATORS

Barry Koch
Barry Koch

Lawrence E. Goldberg
Lawrence E. Goldberg

Joseph E. DaGrosa
Joseph E. DaGrosa

Dated: April 26th, 1991