

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Fred H. Meir, Muriel Meir and
the Estate of Chad J. Meir

90-01740

Name of Respondents

Shearson Lehman Hutton, Inc.
Bernard Casey Poupore
Terese Catherine Lemberg

REPRESENTATION

Fred H. Meir, Muriel Meir and the Estate of Chad J. Meir, an adult, were represented by Stephen I. Dokken, Esq., Scottsdale, Arizona.

Shearson Lehman Brothers, Inc., Bernard Casey Poupore and Therese Catherine Lemberg were represented by Jesse B. Simpson, Esq. and Keith Beauchamp, Esq. of Lewis & Roca, Phoenix, Arizona.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 19, 1990, Fred H. Meir, Muriel Meir and the Estate of Chad J. Meir, an adult, ("Claimants") alleged that Bernard Casey Poupore ("Poupore") while employed by Shearson Lehman Hutton, Inc. n/k/a Shearson Lehman Brothers, Inc. ("SLB") made unsuitable recommendations to Claimants in light of their stated investment objectives, made an unauthorized purchase of RJR Nabisco zero coupon bonds on margin. Claimants further alleged that Terese Catherine Lemberg ("Lemberg") while employed by SLB sold the RJR Nabisco zero coupon bonds without authorization. Claimants specifically alleged violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, violations of the Arizona Securities Statutes; A.R.S. Section 13-2314(A) ("Arizona RICO"); Arizona common law breach of contract, breach of fiduciary duty, negligence, fraud and bad faith.

In the joint Answer of SLB and Poupore filed with the NASD on or about September 17, 1990, and joined in by Lemberg on or about November 2, 1990,

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically denied that the purchase of RJR Nabisco zero coupon bonds was an unauthorized transaction. Respondents stated that this investment was made on the instructions of Fred Meir after discussions with Poupore about the risks and rewards associated with this purchase. Respondents also stated that the purchase of the RJR Nabisco zero coupon bonds were consistent with the Claimant's expressed investment objectives, all transactions were authorized and asserted the following affirmative defenses: waiver, ratification, estoppel, laches, release and assumption of risk.

RELIEF REQUESTED

Claimants requested an award of \$28,500.00 for actual damages, pre award interest, treble damages, punitive damages of at least \$750,000.00, reasonable attorney's fees and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded their costs and attorney's fees.

OTHER ISSUES

At the commencement of the hearing, the NASD file and records were corrected to reflect that the claims asserted on behalf of Chad J. Meir were in fact brought on behalf of the Estate of Chad J. Meir, an adult.

Respondents at the conclusion of the second full day of hearing made a motion to exclude the testimony of Dr. Robert Sivak, Chad J. Meir's treating psychiatrist. After considering the offer of proof made by Claimant's counsel and the arguments asserted on behalf of both parties, the panel deliberated in Executive Session and determined to grant Respondents motion and exclude the testimony of Dr. Robert Sivak.

PROCEDURAL MATTERS

On Tuesday, August 20, 1991, Wednesday, August 21, 1991, Thursday, August 22, 1991 and Friday, August 23, 1991 in Scottsdale, Arizona during a hearing lasting a total of eleven (11) sessions, including two (2) pre-hearing conferences with Victor Wright, the presiding Chairman, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 15, 1990 by Claimants Fred H. Meir, Muriel Meir and Chad J. Meir, on September 14, 1990 by William A. Hohauser on behalf of Respondent Shearson Lehman Hutton, Inc., n/k/a Shearson Lehman Brothers, Inc., on October 26, 1990 by Respondent Casey Poupore and on October 29, 1990 by Respondent Catherine Lemberg.

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. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;

2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein; and

3. 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 \$1000.00 previously deposited with the NASD by the Claimants. Claimant Fred H. Meir only and not Muriel Meir, Chad J. Meir or the Estate of Chad J. Meir shall pay to the NASD the sum of \$8,600.00 as forum fees.

By the Panel

Dated: August 23, 1991

Victor Wright
Presiding Chair
Public Arbitrator

Dated: August 23, 1991

Louise R. Waken
Public Arbitrator

Dated: August 23, 1991

Leon G. Mackey
Industry Arbitrator