

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Jesse R. and Luria M. Chitwood

90-01944

Name of Respondents

Shearson Lehman Hutton, Inc.  
Daniel Miller

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Heard before:

Public/Industry

Robert P. Ross  
Andrew M. Temin  
Burgess Davis

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

CASE SUMMARY

In a claim filed by Jesse R. and Luria M. Chitwood ("Claimants") on July 12, 1990, Claimants alleged that Respondent Daniel Miller ("Miller"), a broker for Respondent Shearson Lehman Hutton, Inc. ("Shearson") persuaded the Claimants to purchase unsuitable investments. Claimants alleged that Respondent Miller assured Mr. Chitwood that the Claimants would receive an annual yield on their investment of 20-30 percent. Claimant alleged that Miller induced them to open a margin account with Respondent Shearson. Claimants alleged they were unsophisticated investors and were unsuitable for trading on margin. Claimants alleged that they told Miller they did not want to open a margin account and that they were unaware they were trading on margin until the Claimants received margin calls.

Respondents in a joint statement of answer filed on October 8, 1990 maintained that all trades made by the Claimants were discussed with the Claimants, authorized by the Claimants and were suitable for the Claimants. Respondents maintained that the risks and the use of a margin account were fully discussed with the Claimants and that Claimants knowingly opened a margin account with Respondents. Respondents maintained that Claimants signed the margin agreement of their own volition and without any encouragement on the part of Miller. Respondents maintained that at no time did Respondent Miller assure the Claimants of annual yields on their investment money of 20-30 percent. Respondents maintained that Claimants failed to mitigate their damages.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$37,646.00, interest, costs and attorneys' fees.

Respondents requested that Claimants' claim be dismissed in its entirety, and all costs including attorneys' fees, should be cast upon Claimants.

AWARD

On March 13, 1991, in Louisville, Kentucky the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants Jesse R. and Luria M. Chitwood on July 2, 1990, by Respondent Daniel Miller on October 22, 1990 and by Respondent Shearson Lehman Hutton, Inc. on October 4, 1990. The hearing consisted of 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. That all Claimants' claims are denied in their entirety.
2. The parties shall each bear their respective costs, including attorneys' fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 hearing session deposit previously deposited by the Claimant as their forum fee costs.
4. Respondents are equally assessed forum fees in the amount of \$400.00 payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure.

ARBITRATORS CONCURRING

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW M. TEMIN

cont'd.

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\_\_\_\_\_/s/\_\_\_\_\_  
BURGESS DAVIS

DISSENTING ARBITRATOR

\_\_\_\_\_/s/\_\_\_\_\_  
ROBERT P. ROSS

Date of Decision: March 14, 1991