

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Theodore Bolotin, Ind. & as Trustee)

Case No. 90-02257

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)

George Rosenberg)

Alan Gladstone)

REPRESENTATION

For Claimant, Theodore Bolotin, Individually and as Trustee ("Bolotin"): Russell L. Forkey, Esq. of The Law Offices of Russell L. Forkey.

For Respondent, Shearson Lehman Hutton, Inc. ("Shearson") George Rosenberg ("Rosenberg") and Alan Gladstone ("Gladstone"): Lonnie Zangrillo, Esq. of Boose Casey Ciklin, et al.

CASE INFORMATION

Statement of Claim filed: August 15, 1990 and amended on August 17, 1991. Claimant's Submission Agreement signed: August 14, 1990.

Respondents' Shearson, Rosenberg and Gladstone's, Statement of Answer filed: October 24, 1990 and amended on May 3, 1991. Respondents' Submission Agreements signed by William Hohausser, Esq. on October 31, 1990, on behalf of Shearson.

Respondents, Rosenberg and Gladstone, did not file Submission Agreements as required by Sections 12 and 25 of the Code, Respondents, Rosenberg and Gladstone, being persons associated with an NASD member firm at the time this controversy arose.

HEARING INFORMATION

On March 19, and August 22, 1991, in Fort Lauderdale, Florida, pre-hearing conferences lasting two (2) sessions were conducted via telephone conference call with arbitrators.

On November 20, 21 and January 3, and 6, 1991, in Fort Lauderdale, Florida, hearings lasting seven (7) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: breach of contract; fraud and deceit; negligence; breach of fiduciary duties; and, as it relates to Respondent, Shearson, negligent supervision. Claimant alleged that Respondents misrepresented that a certain IPO stock was likely to increase in value and that the stock's issuer was a "blue chip" company. Claimant alleged that Respondents told him to ignore certain items in the prospectus and, when Claimant expressed a desire to sell, assured him that the investment was sound. Claimant alleged that, in-fact, the investment was not suitable for his account.

Respondents denied all allegations of wrongdoing and alleged that: based upon all factors considered, Respondents had every expectation that the stock would perform well and was a sound investment at the price offered; nothing in the language of Claimant's Profit Sharing Plan, to which the trust was subject, prevented the purchase of the stock; Claimant's concerns were related to a drop in the price of the stock and not to information contained in the prospectus; Claimant never discussed the prospectus with Respondents and never instructed Respondents to sell his position; Respondents made no misrepresentations in their recommendations; and, such recommendations were in accord with Claimant's investment objectives.

Respondents alleged the affirmative defenses of: failure to state a claim; Claimant was the sole and proximate cause of his damages; Claimant was aware of the risks involved; Bolotin did not rely on Respondents' representations; damages were due to market conditions; and, Respondents cannot be held liable if Bolotin's investment strategy did not result in a gain to Claimant.

RELIEF REQUESTED

Claimant requested damages in the amount of \$41,000.00 plus interest, costs, punitive damages of \$9,000.00, attorney's fees and such other relief as the Panel deems appropriate.

Respondent requested dismissal of the claim plus copying costs.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

AWARD

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

1. Respondents, Shearson, Rosenberg and Gladstone, are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimant's request for costs, punitive damages, and attorney's fees is denied.

OTHER COSTS

1. Claimant is found liable and shall pay to Respondent, Shearson, the amount of \$2,000.00 for copying costs.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,500.00 (one pre-hearing conference with full panel x \$400.00 plus one pre-hearing conference with a single arbitrator x \$300.00 plus seven sessions x \$400.00 per session). Claimant is hereby assessed \$2,000.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof. Respondent, Shearson is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the \$120.00 which Respondent, Shearson, overpaid for the postponement in partial satisfaction of such forum fees.

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

Concurring Arbitrators' Signatures

15/
Philip F. Ludovici, Esq.

Public

15/
Calvin D. Cevaai

Industry

Dissenting Arbitrator(s) Signature

15/
Eduardo J. Palacio, Esq.

Public

Arbitrator, Eduardo J. Palacio, Esq., dissents to paragraph #1 of the Award and otherwise concurs in the decision.

Date of Decision: February 20, 1992