

N.A.S.D. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Shearson Lehman Hutton, Inc.

90-02324

Name of Respondents

Daniel Phillips

v.

Daniel Haaland

MAR 26 1992

CHICAGO

~~Consolidated with~~
90-02324

In the Matter of the Arbitration Between

Name of Claimant

Daniel Phillips

Name of Respondents

Shearson Lehman Hutton, Inc.

Daniel Haaland

REPRESENTATION

90-02324

For Claimant Shearson Lehman Hutton, Inc. and Third-Party Respondent Daniel Haaland: Jerry Santangelo, Esq. of Neal Gerber & Eisenberg, Chicago, Illinois.

For Respondent/Counterclaimant and Third-Party Claimant Daniel Phillips: Denis Granda, Esq. of Mackall, Crouse & Moore, Minneapolis, Minnesota.

CASE INFORMATION

90-02324

Statement of Claim filed by Claimant Shearson Lehman Hutton, Inc. on August 21, 1990.

Claimant Shearson Lehman Hutton, Inc.'s Submission Agreement signed on August 20, 1990 by Edward Gioiella .

Claimant Shearson Lehman Hutton, Inc.'s and Third-Party Respondent Daniel Haaland's Answer to the Counterclaim and Third-Party claim of

Respondent/Counterclaimant and Third-Party Claimant Daniel Phillips filed on: May 29, 1991.

Statement of Answer, Counterclaim, and Third-Party claim filed by Respondent/Counterclaimant and Third-Party Claimant Daniel Phillips on: April 22, 1991.

Third-Party Respondent Daniel Healand's Submission Agreement signed on: September 3, 1991.

Respondent/Counterclaimant and Third-Party Claimant Daniel Phillip's Submission Agreement signed on: April 12, 1991.

91-00059

Statement of Claim filed by Claimant Daniel Phillips on or about: November 16, 1990.

Claimant Daniel Phillips's submission agreement signed on: November 16, 1990.

HEARING INFORMATION

Hearing Dates/Sessions: February 3, 1992 for two (2) sessions.
February 4, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

90-02324

Claimant Shearson Lehman Hutton, Inc. ("Shearson") alleged that Respondent Daniel Phillips has an outstanding debit balance in his account with Shearson which resulted from Phillip's failure to meet a margin call when his commodities account was liquidated.

Respondent/Counterclaimant and Third-Party Claimant Daniel Phillips ("Phillips") in his Answer, Counterclaim, and Third-Party claim denied the allegations set forth in the claim. Phillips alleged that he was an unsophisticated investor and that Shearson, through its agent, Third-Party Respondent, Daniel Healand ("Healand") solicited Phillips to open a commodities/futures account which was unsuitable for Phillips. Phillips, in his Counterclaim against Shearson and Third-Party claim against Healand, alleged the following violations in connection with his account: (1.) Rule 10(b)(5) and Section 20(2); (2.) Breach of Fiduciary Duty; (3.) Negligence; (4.) Blue Sky Law; (5.) Negligent Supervision; and (6.) Common Law Fraud.

Claimant Shearson and Third-Party Respondent Daniel Healand, in their answer to the Counterclaim and Third-Party claim, denied the allegations set forth in the respective claims. Shearson alleged that Phillips was "doing his own trading." Shearson further alleged that in the agreement with

Shearson, Phillips acknowledged that he would be responsible for any debts and deficiencies in his account.

91-00059

Claimant Daniel Phillips ("Phillips") in his Statement of Claim, alleged that he was an unsophisticated investor and that Respondent Shearson, through its representative, Respondent Daniel Healand, engaged in excessive trading in Phillip's account. Phillips alleged the violations set forth in his Counterclaim and Third-Party claim in arbitration case number 90-02324.

RELIEF REQUESTED

90-02324

Claimant Shearson Lehman Hutton, Inc. requested that a decision be rendered against Respondent Daniel Phillips in the full amount requested, \$34,611.66 (principal of \$34,303.05 plus accrued interest of \$308.61 from the date the debit was incurred to March 4, 1990), filing costs, attorney's fees, and additional interest from March 5, 1990.

Respondent/Counterclaimant and Third-Party Claimant Daniel Phillips requested damages against Shearson and Third-Party Respondent Daniel Healand in the amount proved at the arbitration hearing, together with interest, costs, and reasonable attorney's fees, and punitive damages in an amount that is just and equitable. Phillips requested the same in arbitration case number 91-00059.

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.

Respondent Daniel Phillips filed a request to Amend his answer in arbitration case number 90-02324 in order to cite the correct statute and the correct NFA Rule number. The panel considered the request and admitted the Amended Answer.

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. Claimant Shearson Lehman Hutton, Inc.'s claim shall be and hereby is denied in its entirety;
2. Respondent Daniel Phillips's Counterclaim and Third-Party claim shall be and hereby are denied in their entirety;
3. Each party shall bear their own costs and expenses, including attorney's fees, other than those costs and expenses specifically enumerated herein;

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions X \$600 = \$1800 minus hearing session deposit of \$600 = net \$1200 due.

Forum fees Assessed Against Shearson Lehman Hutton, Inc. in the amount of \$1200.

The NASD shall refund Daniel Phillips the hearing session fee previously deposited with the NASD in the amount of \$500.

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

By The Arbitration Panel:

Dated:

James A. Lundberg, Esq.
Public Arbitrator, Chairperson

James P. Trainor, Jr.
Public Arbitrator

Paul J. McGough, Jr.

Paul J. McGough, Jr.
Industry Arbitrator

March 26, 1992

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By The Arbitration Panel:

Dated: 3/26/92

James A. Lundberg, Esq.
Public Arbitrator, Chairperson

James P. Trainor, Jr.
Public Arbitrator

Paul J. McGough, Jr.
Industry Arbitrator



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By The Arbitration Panel:


James A. Lindberg, Esq.
Public Arbitrator, Chairperson

James P. Trainor, Jr.
Public Arbitrator

Paul J. McGough, Jr.
Industry Arbitrator

Dated:

3/25 / 1992