

N.A.S.D. AWARD

Nov 12 1991

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

George A. Sloan, Individually and
as Executor of the Estate of Vivian
S. Marshall

90-02389

Name of Respondent(s)

Robert C. Allison Jr.
Shearson Lehman Hutton, Inc.

REPRESENTATION

For Claimant: George A. Sloan, Individually and as Executor of the Estate of Vivian S. Marshall was represented by Charles L. Schlumberger, Esq. and Charles C. Price, Esq. of Wright, Lindsey & Jennings, Little Rock, Arkansas.

For Respondents: Shearson Lehman Brothers, Inc. formerly known as Shearson Lehman Hutton, Inc. and Robert C. Allison, Jr. were represented by Jamie Brownlee-Jordan, Esq. and David G. Russell, Esq. of Parker, Hudson, Rainer & Dobbs, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim Filed: August 27, 1990.
Claimant's Submission Agreement signed on: August 10, 1990 by
George A. Sloan.

Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman Hutton, Inc. and Robert C. Allison, Jr. on: February 8, 1991.

Respondent Shearson Lehman Brothers, Inc. f/k/a Shearson Lehman's Submission Agreement signed on: February 28, 1991 by William Hohauser.

Respondent Robert C. Allison Jr.'s Submission Agreement signed on: January 31, 1991.

HEARING INFORMATION

Pre-Hearing Date/Session: September 5, 1991 for one (1) Session

Hearing Dates/Sessions: September 10, 1991 for two (2) Sessions

September 11, 1991 for two (2) Sessions

Hearing Location: Little Rock, Arkansas

CASE SUMMARY

Claimant George A. Sloan, ("Sloan") individually and as executor of the estate of Vivian S. Marshall alleged that Respondent Robert C. Allison, Jr. ("Allison"), while employed by or acting as an agent for Respondent Shearson Lehman Brothers, Inc.

("Shearson"), repeatedly placed Sloan's options accounts in unsuitable investments, including speculative short-term option trading in S&P 100 Index Options and a short sale of 400 shares of Apple Computer on the OTC Market. Sloan further alleged that Allison misrepresented or failed to explain the risks and nature of short sales. In addition, Sloan alleged that Allison induced him into investing in a "real estate venture" by misrepresenting or failing to disclose the risks and nature of the investment. Sloan further alleged that the "real estate venture" was neither registered nor was a proof of exemption filed with the Arkansas Securities Department. Based upon the allegations, Sloan asserted violations of Section 10b and Rule 10b-5 of the Securities Exchange Act of 1934; section 12(2) of the Securities Act of 1933; Section 23-42-106 of the Arkansas Securities Act; common law fraud and fraudulent concealment; and breach of fiduciary duty. Shearson's liability was predicated upon failure to supervise a registered agent, controlling person liability and respondeat superior.

Respondents Shearson and Allison denied the material allegations of the Statement of Claim, alleging that Sloan was a sophisticated investor who was fully informed of and aware of the speculative components of the account and who, explicitly and implicitly, authorized and acquiesced to all actions taken by Shearson and Allison. Respondents further alleged that any alleged damage was caused by the volatile markets in which Claimant knowingly participated and not by the Respondents. In addition, Respondents alleged as follows:

1. The trading in the accounts was consistent with the objectives Sloan identified to Allison;
2. Sloan received confirmations of each transaction and monthly statements outlining the activity in his account and the performances of his investments;
3. The real estate venture was a private placement, intended to be presented to a limited number of investors and exempt under federal or Arkansas Securities laws; and
4. Sloan initiated and persisted in acquiring the interest in the real estate venture, which was fully explained to him by Allison.

Respondents alleged as affirmative defenses that the Claims are barred by the doctrines of ratification, laches, waiver, estoppel, assumption of risk and the applicable Statute of Limitations.

RELIEF REQUESTED

Claimant George A. Sloan, individually and as executor of the estate of Vivian S. Marshall, initially requested entry of an award against Respondents in the sum of \$45,701.80 for compensatory damages, punitive damages in the sum of \$45,701.80, interest at the rate of 10% per annum in the amount of \$11,060.92 as of August 30, 1990 and attorneys fees in the sum of \$25,000.00. As amended in June of 1991, Claimant requested the sum of \$120,000.00 for compensatory damages, \$120,00.00 for punitive damages, interest as calculated in accordance with law and attorneys' fees in the sum of \$50,000.00.

Respondents Shearson Lehman Brothers, Inc. and Robert C. Allison, Jr. requested that the Statement of Claim and Supplement be dismissed and denied in their entirety and that Respondents be awarded costs and expenses, including reasonable attorneys' fees, incurred in defending this action.

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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a

handwritten, signed Award 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;

2. In regard to Allegations I and II of the Statement of Claim, the parties stipulated on the record at the arbitration hearing that Claimant would receive from Respondent Allison a payment of \$5,000.00 in principal and an unspecified amount of interest by Friday, September 13, 1991, leaving the issues of attorneys' fees and punitive damages to the Panel's determination. Respondents Shearson Lehman Brothers, Inc. and Robert C. Allison, Jr. are jointly and severally liable for and shall pay to Claimant George A. Sloan the sum of \$2,500.00 as attorneys' fees and expenses in connection with Allegations I and II. In making this award of attorneys' fees to Claimant, the arbitration panel considered the arguments of the parties as well as Section 23-42-106 of the Arkansas Code Annotated, and determined that the authority existed for an award of attorneys' fees to the Claimant, George A. Sloan.

3. Furthermore, Respondents Shearson Lehman Brothers, Inc. and Robert C. Allison, Jr. are jointly and severally liable for and shall pay to Claimant George A. Sloan the sum of \$13,000.00 in connection with the claim set forth in Allegation VI;

4. All other claims are hereby dismissed and denied in their entirety;

5. All claims for punitive damages are hereby dismissed and denied in their entirety;

6. Parties shall bear their own costs of arbitration, including attorneys' fees (except as otherwise provided in Paragraph 2 of the award), unless specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed for one pre-hearing session and four regular hearing sessions.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$150.00 and the hearing session deposit of \$500.00 previously deposited by the Claimant George A. Sloan. Claimant George A. Sloan is liable for and shall pay to the NASD additional forum fees in the sum of \$500.00. Respondents

Shearson Lehman Brothers, Inc. and Robert C. Allison, Jr. are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$1,150.00.

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

BY THE ARBITRATION PANEL

Dated:

Tom F. Digby, Jr.
Tom F. Digby, Jr., Esq.
Public Arbitrator
Chairperson

Nov. 4 1991

Robert T. Allen, Jr.
Industry Arbitrator

Steve Shults, Esq.
Public Arbitrator

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BY THE ARBITRATION PANEL

Dated:

Tom F. Digby, Jr., Esq.
Public Arbitrator
Chairperson

Robert T. Allen

Robert T. Allen, Jr.
Industry Arbitrator

Steve Shults, Esq.
Public Arbitrator

11/5/91

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BY THE ARBITRATION PANEL

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11-4-91
