



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Arbitration

Jaw

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Wallace C. Hanger

AWARD
90-02404

Name of Respondents

Shearson Lehman Brothers, Inc.
American Municipal Securities, Inc.
Brian Martzolf

REPRESENTATION

For Claimant: Edward L. Blanton of the law firm of Blanton & McCleary.

For Respondents Shearson Lehman Hutton, Inc. and Brian Martzolf: Michael Solinsky, Esq. and Mahlon M. Frankhauser, Esq. of the law firm of Lord Day & Lord, Barrett Smith.

For Respondent American Municipal Securities, Inc.: Clifford Hunt, Esq. of the law firm of Riden, Earle & Kiefner, P.A.

CASE INFORMATION

Statement of Claim filed: August 29, 1990.

Motion to Preclude Answers filed on: May 15, 1991.

Claimant's Submission Agreement signed on: August 21, 1990.

Statement of Answer and Affirmative Defenses of Respondent American Municipal Securities, Inc. filed on: May 13, 1991.

Amended Statement of Answer and Affirmative Defenses of Respondent American Municipal Securities, Inc. filed on: July 29, 1991.

Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed on: August 19, 1991.

Respondent Brian Martzolf's Submission Agreement signed on: August 7, 1991.

Respondents Shearson Lehman Hutton, Inc. and Brian Martzolf's joint Statement of Answer filed on: May 22, 1991.

HEARING INFORMATION

Pre-Hearing Conference: October 25, 1991, 1 Session.

Hearing Dates/Sessions: November 5, 1991, 2 Sessions.
November 6, 1991, 2 Sessions.

Hearing Location: Baltimore, Maryland.

CASE SUMMARY

Claimant alleged that Respondents made misrepresentations to him and failed to disclose pertinent information to him concerning his investments in certain bonds and stocks; failed to advise him of the risks inherent in his investments; failed to notify him he was trading on margin; failed to conduct adequate research on the investments recommended to Claimant; borrowed money against his investments without his knowledge; failed to adequately respond to Claimant's distress at suffering huge losses and took advantage of the Claimant; breached the fiduciary duty owed the Claimant and negligently handled Claimant's account. Claimant further alleged the Respondents Shearson Lehman Hutton, Inc. and American Municipal Securities, Inc. failed to properly supervise their employees. Claimant filed a Motion to Preclude Answers of Respondents Shearson Lehman Hutton, Inc. and Brian Martzolf for their failure to timely respond to the Statement of Claim.

Respondent American Municipal Securities Inc. maintained it did not make any misrepresentations to the Claimant and given Claimant's securities experience the Claimant could not reasonably believe any investment was essentially risk-free. Respondent American Municipal Securities, Inc. further maintained it did not breach the fiduciary duty owed the Claimant; the Claimant's claims are barred by the Statute of Limitations; the Claimant's losses were not proximately caused by any unlawful conduct of American Municipal Securities, Inc.; Claimant knew of, understood and assumed the risk in engaging in the type of transactions he engaged in; all risks were disclosed to the Claimant; Claimant approved, authorized or ratified the transactions he is complaining of; Claimant failed to mitigate his damages; failed to exercise ordinary care and any injury suffered by Claimant was caused by the

Claimant's actions or persons or entities other than American Municipal Securities, Inc.

Respondents Shearson Lehman Hutton and Brian Martzolf maintained the Claimant was acutely aware of the risks and rewards attendant to his investments and the mere fact that a particular investment did not return a profit does not render that investment unsuitable or give rise to a cause of action for damages. Respondents Shearson Lehman Hutton and Brian Martzolf further maintained that even when the Claimant was out of the country Respondent Brian Martzolf would communicate regularly with him. Respondents Shearson Lehman Hutton, Inc. and Brian Martzolf further maintained Claimant's losses were due to legitimate and unforeseeable market fluctuations for which neither a brokerage firm nor its employees should be held liable.

RELIEF REQUESTED

Claimant requested damages against Respondent American Municipal Securities, Inc. and Brian Martzolf for the time he was employed at American Municipal Securities, Inc. in the sum of \$25,363.00 plus interest at the rate of 10% per annum and costs of the action.

Claimant requested damages against Respondent Shearson Lehman Hutton, Inc. and Brian Martzolf for the time he was employed at Shearson Lehman Hutton, Inc. in the sum of \$43,243.00 plus interest at the rate of 10% per annum plus costs of the action.

Respondent American Municipal Securities, Inc. requested dismissal of all claims plus costs and other and further relief that the panel deems proper.

Respondents Shearson Lehman Hutton and Brian Martzolf requested dismissal of all claims and that they be awarded their costs including attorneys' fees.

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. All claims by the Claimant be and hereby are dismissed in all respects.
2. The Respondents' Motion to Dismiss based on the Statute of Limitations is denied.
3. The Claimant's Motion to Preclude the Answers is denied.
4. Each party shall bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

5 sessions X \$500.00 = \$2,500.00 minus hearing session deposit of \$500.00 = net \$2,000.00.

The Claimant Wallace C. Hanger be and hereby is liable and shall pay to the NASD the sum of \$125.00 to represent forum fees and the Respondent American Municipal Securities, Inc. be and hereby is liable and shall pay to the NASD the sum of \$625.00 to represent forum fees and the Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the NASD the sum of \$625.00 to represent forum fees and the Respondent Brian Martzolf be and hereby is liable and shall pay to the NASD the sum of \$625.00 to represent forum fees.

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

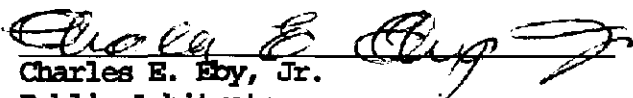
ARBITRATOR SIGNATURE



William H. Malloy, Jr., Esq.
Public Arbitrator



B. James Rohrbacher
Industry Arbitrator



Charles E. Eby, Jr.
Public Arbitrator

Date of Decision: January 23, 1992