

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Patricia W. Drasner and Helen M. Witty, )  
as Trustees of the Helen M. Witty Trust )

Case No. 90-02486

Name of Respondent(s) )

Shearson Lehman Hutton, Inc. )

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.  
Virginia Rhyne  
Roark Young

Public  
Public  
Industry

REPRESENTATION

Claimants, Patricia W. Drasner ("Drasner") and Helen M. Witty ("Witty") as Trustees, were represented by Michael D. Harris, Esq. of Lewis, Vegosen & Rosenbach, P.A.

Respondent, Shearson Lehman Hutton, Inc. ("Shearson"), was represented by Debra A. Jenks, Esq. of Boose Casey Ciklin Lubitz et al.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on September 5, 1990. Claimants alleged that the Trust established brokerage accounts with Respondent to conserve the capital primarily through investments in tax exempt municipal securities and some CD's; that as a result of the complexity and volume of transactions in the accounts, errors regularly occurred; that Respondent failed to correct many of the errors including those in favor of the Trust; that Respondent failed to provide monthly statements for some months; that Respondent met with Drasner and worked out an agreement to correct the errors and credit the Trust appropriately; that Respondent breached its agreement with Claimants; and, that Respondent's actions constitute conversion, civil theft and breach of contract.

In a Statement of Answer filed with the NASD on February 14, 1991, Respondent denied all allegations of wrongdoing and alleged that the purported agreement was not made on behalf of Shearson; that Claimants were unjustly enriched by duplicated credits; and, that Claimants coerced a former Shearson employee to make statements to serve Claimants' interests.

Respondent alleged the affirmative defenses of failure to state a cause of action; no criminal intent; performance; statute of limitations; failure to comply with Section 768.72, Florida Statutes; violation of Article I, Sections 9 and 17 of the Florida Constitution and the Eighth and Fourteenth Amendments of the U.S. Constitution; and, the Panel is without jurisdiction to award attorney's fees.

#### RELIEF REQUESTED

Claimants requested damages in the amount of \$70,713.85; punitive damages, treble damages, statutory interest, attorney's fees pursuant to Section 57.105, Florida Statutes and costs.

Respondent requested dismissal and costs.

#### AWARD

On August 27 and 28, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on August 20, 1990, and by Neil A. Sussman, on behalf of Shearson on January 15, 1991.

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. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
3. Claimants' requests for attorney's fees, costs, punitive damages, and treble damages are denied.

#### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00). Claimants are hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 session fee previously deposited in partial satisfaction thereof. Respondent is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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

OTHER ISSUES

None

Concurring Arbitrators' Signatures

15/  
Casey W. Mills, Esq.

15/  
Virginia Rhyne

15/  
Roark Young

Date of Decision: October 11, 1991