

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Lewis Rowe)

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)
David J Williams, III)

Case No. 90-02532

REPRESENTATION

For Claimant, Lewis D. Rowe ("Rowe"): Marjorie Miller, Esq. of the Law Offices of Marjorie Miller.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and David J. Williams III ("Williams"): Jeffrey Friedman, Esq. of Shearson.

CASE INFORMATION

Statement of Claim filed: September 11, 1990. Claimant's Submission Agreement signed: December 18, 1989.

Respondents' Statement of Answer filed: December 6, 1990. Respondents' Submission Agreements signed by Williams on December 17, 1990, and by Jeffrey Friedman on behalf of Shearson on December 17, 1990.

HEARING INFORMATION

On July 1, 2, 9 and 11, 1991; in Fort Lauderdale, Florida, pre-hearing conferences lasting four (4) sessions were conducted via telephone conference call. The pre-hearing conferences on July 1 and 9, 1991, were conducted without an arbitrator and the pre-hearing conferences on July 2 and 11, 1991 were conducted with an arbitrator.

On August 27, and 28, 1991; October 30, 1991; March 16, and 17, 1992, in Fort Lauderdale, Florida, hearings lasting 12 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for fraud, negligence, misrepresentation, breach of fiduciary duty, negligent supervision and breach of contract. Claimant alleged that Respondent, Williams, failed to follow Claimant's instructions to liquidate his account and, as a result, Claimant

was not able to meet the commitment he had made for another investment and when the account was finally liquidated, Claimant received only a portion of his original investment.

Respondents denied all allegations of wrongdoing and alleged that: Claimant's investment objective was capital appreciation; the investments were suitable for Claimant; all trades were authorized by Claimant; the account was a non-discretionary margin account; after receiving the letter to liquidate the account, Williams discussed the consequences of doing so with Claimant and Claimant changed his written instructions and chose to liquidate the account gradually and was, therefore, adversely affected by the October 1987 market crash.

Respondent alleged the affirmative defenses of failure to state a cause of action; compliance with all applicable rules and regulations; good faith; no causal relationship between Respondents' acts and Claimant's damages; lack of reliance; waiver; the claims are time barred; Claimant's request for punitive damages violates the U.S. and New York constitutions as well as New York and Florida law; and applicable law does not entitle Claimant to recover his attorney's fees.

RELIEF REQUESTED

Claimant requested damages of between \$100,000.00 and \$500,000.00, plus interest, punitive damages, attorney's fees pursuant to Section 517.211 Florida Statutes, costs and such other relief as the Panel deems appropriate.

Respondents requested dismissal of the claim, plus 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson and Williams, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$20,000.00.
2. Claimant's requests for attorney's fees, interest and punitive damages are denied.

OTHER COSTS

1. Respondent, Shearson, is also found liable and shall pay to Claimant the amount of \$750.00 for costs associated with Claimant's expert witness.

2. Claimant is hereby assessed \$375.00 for the postponement fee due for the postponement of the July hearing dates.

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$9,600.00 (two pre-hearing conferences with an arbitrator x \$300.00 per conference plus 12 sessions x \$750.00 per session). Claimant is hereby assessed \$3,200.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof. Shearson is hereby assessed \$6,400.00 payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/
Robert Herschmann, Esq.

Public

/s/
Thomas E. Swenson

Public

/s/
Anthony S. Pastro, Esq.

Industry

Date of Decision: July 30, 1992