

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

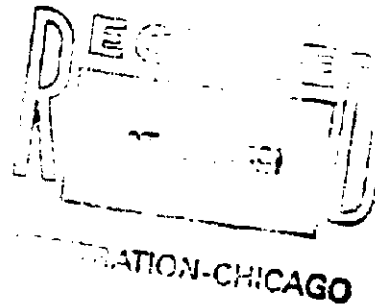
Name of Claimant

Susan Chandler

90-02681

Name of Respondents

Shearson Lehman Hutton, Inc.  
David Bruce



REPRESENTATION

Claimant Susan Chandler was represented by Rosemary J. Schockman, Esq. of Fenmore Craig, Phoenix, Arizona. Respondents Shearson Lehman Hutton, Inc. n/k/a Shearson Lehman Brothers, Inc. and David Bruce were represented by Tom Galbraith, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE SUMMARY

In a Statement of Claim filed with the NASD on September 25, 1990, Claimant Susan Chandler ("Chandler") alleged that Respondents David Bruce ("Bruce") and Shearson Lehman Hutton, Inc. n/k/a Shearson Lehman Brothers, Inc. ("Shearson") mishandled Chandler's investment securities account and Bruce made misrepresentations to Chandler. Chandler alleged that Bruce actively solicited her account and presented two possible portfolios for Chandler to consider. Bruce allegedly represented that he increase Chandler's after-tax income from \$35,558 to in excess of \$59,685. Chandler alleged that the clear focus of Bruce's so-called financial and tax analysis was that the portfolio could be sold and converted to other securities without tax consequences. Shortly after Bruce's first meeting with Chandler, Bruce allegedly told her that her portfolio should be liquidated immediately because interest rates were going to go down affecting the prices at which bonds could be purchased. Chandler allegedly authorized Bruce to sell the stocks. Bruce allegedly obtained the stock certificates on Friday, August 4, 1989 and by the close of trading on Monday, August 7, 1989 had sold all of Chandler's securities. Chandler alleged that she understood that she would be contacted about what purchases were to be made in her account, but that of fifty-one transactions in her account, fifty transactions were executed at the sole discretion of Bruce with no input from Chandler.

Chandler alleged that she was not a sophisticated investor and was not

familiar with the tax aspects of Bruce's proposed transactions. Chandler alleged that Bruce intentionally and recklessly failed to disclose to Chandler that there would be an enormous taxable gain on the sale of her original stocks. Chandler alleged that Bruce had a fiduciary obligation to disclose the tax consequences of his trading and as a consequence of Bruce's reckless actions Chandler was forced to sell the remaining liquid assets to satisfy the tax liability. Chandler alleged that she would not have given Bruce control of her portfolio and would not have sold her securities had she been informed of the tax on her capital gains. Chandler alleged that the actions by Bruce and Shearson constituted violations of Section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 promulgated thereunder, Section 17(a) of the Securities Act of 1933, violation of the Arizona Securities Statute, violated both the Arizona and Federal RICO statutes, constituted breach of fiduciary duty, fraud, negligence and breach of contract.

In a Statement of Answer filed with the NASD on January 28, 1991, Shearson and Bruce alleged that there was never any representation that Chandler would not incur any substantial tax obligation. Bruce and Shearson stated that the example used by Bruce to describe the plan showed the potential tax consequence at the bottom of the page. Shearson and Bruce alleged that Chandler decided to go forward with the proposal and received prospectuses on all funds, disclosure pamphlets of annuities and commission breaks and discounts on all of the unsolicited sell orders. Bruce alleged that all the stocks purchased on her account were discussed and approved prior to purchase. Shearson and Bruce asserted various affirmative defenses including but not limited to, waiver and that the claims were time barred.

#### RELIEF REQUESTED

Chandler requested damages of \$398,102.50 which included damages for capital gains taxes incurred by Chandler, accounting fees, commissions charged to Chandler and attorney's fees. Chandler also requested an award of punitive damages, treble damages under the appropriate statutes, pre-judgment interest, expert witness fees and arbitration costs. Shearson and Bruce requested dismissal of the claim in its entirety and that costs and disbursements be assessed to Chandler.

#### OTHER ISSUES

Included in those briefs were requests for and legal argument supporting an award of attorney's fees for each party to the proceeding. The arbitration panel accepted the Respondent's oral request at hearing to amend their pleadings to include a request for an award of attorney's fees necessary to defend the claim under A. R. S. Section 12-341.01 (C). The arbitrators accepted hearing briefs from each party which set forth legal argument on certain legal issues. Included in those briefs were requests for and legal argument supporting an award of attorney's fees for each party to the proceeding.

### PROCEDURAL MATTERS

On September 5 and 6, 1991 and October 3 and 4, 1991 in Scottsdale, Arizona during a hearing lasting a total of eight (8) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 19, 1990 by Susan J. Chandler, on January 25, 1991 by Joseph C. Pickard on behalf of Shearson Lehman Hutton, Inc. n/k/a Shearson Lehman Hutton, Inc.

Respondent David Bruce did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared at the hearing and testified is bound by the determination of the arbitration panel on all issues submitted.

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

The arbitration panel, having considered the pleadings, any oral amendments to same, the testimony, the parties' hearing briefs, the evidence presented at the hearing and oral argument of counsel at the hearing has decided in full and final resolution of the issues submitted for determination as follows:

1. Chandler withdrew the motion to preclude Shearson and Bruce from presenting any facts or defenses to the claim pursuant to Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure. Accordingly, this motion was not ruled upon by the panel;

2. Respondent Jane Doe Bruce (as named in the pleadings) did not appear in the proceeding and no evidence was presented by Chandler concerning Respondent Jane Doe Bruce. Accordingly, all claims asserted against Respondent Jane Doe Bruce by Chandler shall be and are hereby denied and dismissed in their entirety;

3. Chandler's claims asserted against Shearson and Bruce are found to be without merit for the reason that Chandler failed to prove the claims or any of them by a preponderance of the credible evidence. Accordingly, all of Chandler's claims asserted against Shearson and Bruce shall be and are hereby denied and dismissed in their entirety;

4. Chandler is liable for and shall pay to Shearson and Bruce jointly, the sum of \$30,000.00 as reasonable attorney's fees to defend this action. In making this award the panel enters the award pursuant to the stipulation of the parties made on the record at the hearing on October 4, 1991 as to the

amount of attorney's fees incurred by Respondents Shearson and Bruce. Additionally, the panel considered the legal authorities cited in the parties' respective hearing briefs and found that authority existed to allow an award of attorney's fees under A.R.S. 12-341.01 (C);

5. The parties shall each bear their respective costs and expenses other than those enumerated elsewhere in this award; and

6. Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed. Chandler is assessed additional forum fees of \$7000.00 and the NASD shall retain the \$250.00 claim filing fee and the \$1000.00 hearing session deposit previously deposited with the NASD by Chandler. No additional forum fees are assessed against Respondents Shearson and Bruce.

Concurring Arbitrators' Signatures

Dated:

Victor Wright  
Victor Wright, Esq.  
Presiding Chairman  
Public Arbitrator

Oct. 23, 1991

Glenn Rosenthal  
Glenn Rosenthal  
Public Arbitrator

Oran R. Brown  
Oran R. Brown  
Industry Arbitrator

Date served by NASD: 11-21-91

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Public Arbitrator

  
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Glenn Rosenthal  
Public Arbitrator

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10-29-91  
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Oran R. Brown  
Industry Arbitrator

Date served by NASD:

11-21-91

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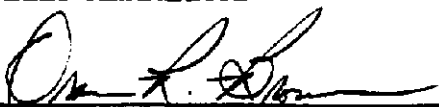
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Oran R. Brown  
Industry Arbitrator

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10/23/91  
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Date served by NASD: 11-21-91