

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	:	
Florence S. Reynolds	:	
Claimant	:	
vs.	:	AWARD
Shearson Lehman Hutton, Inc.	:	Case #90-02885
Respondent	:	

Heard by:

Rob McLaughlin, Esq.
Marshall Passman
Sidney B. Wachtel

Public Arbitrator
Public Arbitrator
Industry Arbitrator

REPRESENTATION

The Claimant was represented by Joseph L. Bianculli, Esq. and the Respondent was represented by Charles R. Mills, Esq. of the law firm of Lord Day & Lord, Barrett Smith.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 16, 1990 Claimant Florence S. Reynolds alleged the Respondent through its account representatives engaged in a continuing course of conduct designed and intended to induce the Claimant to invest large sums of money in an option trading scheme that they represented to her would be "foolproof" and "risk free" when they knew that such representations were false and that the Claimant had neither the experience nor information to make an independent assessment of such representations. Claimant further alleged following substantial trading losses the Respondent through its account representatives engaged in a course of conduct which was designed to conceal their wrongdoing and to prevent her from taking any action to discover and remedy the full extent of the injuries they had caused. Claimant further alleged the Respondent failed to appropriately evaluate the suitability of option trading for the Claimant, engaged in excessive trading in options, failed to properly supervise its account representatives, and failed to follow the Claimant's instructions. Respondent Shearson Lehman Hutton, Inc. maintained the Claimant agreed to and was fully aware of the options transactions in her account and never at any time over the five year period of options trading complained to the Respondent about any transactions or loss and waited until

after her Shearson financial consultant died before she filed her Statement of Claim and by her conduct approved the transactions in her account. Respondent further maintained Claimant received monthly statements, confirmations of each transaction, separate profit and loss schedules and tax schedules detailing every option transaction made in her account over a five year period and was in constant communication with her account representative about them. Respondent further alleged the options transactions were suitable for the Claimant given her overall net worth, investment objectives and ability to understand the risks associated with options transactions and she is barred by the doctrines of estoppel, waiver and ratification. Respondent further maintained the Claimant's claims are barred by the Statute of Limitations in that the Statute of Limitations to be applied as to common law fraud claims is that of the Commonwealth of Virginia which is two years and as to federal securities law fraud claims is one year from discovery but no more than three years after occurrence of the violation and the Claimant has wholly failed to satisfy such Statute of Limitations since she waited more than five years to file her claim and also that her claim is barred under the Virginia Statute of Limitations for breach of fiduciary duty which is one year from the date when the wrong was discovered or should have been discovered. Claimant maintained that the NASD rules which control the proceeding provide for a six year period of limitations and that is the applicable time period. Claimant further maintained that the panel may grant relief for claims that otherwise might have accrued earlier than the applicable limitations period under the doctrine of "tolling" if the Claimant can show that the Respondent concealed from the Claimant material facts necessary to support a claim. Therefore, the period of limitations would not begin to run until the time when the Claimant actually discovered or by the exercise of "reasonable diligence" should have discovered those facts. Claimant further maintained that the applicable Statute of Limitations is the Statute of Limitations of New York governing securities fraud which is six years from the date of the transaction at issue plus "tolling" where applicable.

RELIEF REQUESTED

Claimant requested damages of \$151,897.00, prejudgement interest at the rate of 9% annually from the date of the claim, damages resulting from the Respondent's breach of fiduciary duty in an amount to be determined by the arbitration panel and attorneys fees. Respondent requested dismissal of all claims and an award of its costs and attorneys fees incurred in defending the arbitration.

AWARD


On May 22, 1991 and May 23, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Florence S. Reynolds on October 11, 1990 and by Respondent Shearson Lehman Hutton, Inc. on January 23, 1991. The hearing was conducted at the National Association of Securities Dealers, Inc. offices located in Washington, D.C. and consisted of four (4) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The claim is time barred under all applicable Statutes of Limitations.
2. The parties shall each bear their respective costs, including attorneys' fees.

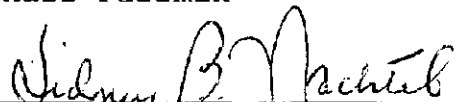
FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the Nine Hundred Fifty Dollars and No Cents (\$950.00) filing fee previously deposited by the Claimant and the Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the Claimant the sum of Nine Hundred Fifty Dollars and No Cents (\$950.00) to reimburse the Claimant for the filing fee paid. In addition the Respondent Shearson Lehman Hutton, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Two Thousand Two Hundred Fifty Dollars and No Cents (\$2,250.00) to represent forum fees.

ARBITRATOR SIGNATURES


Robert McLaughlin, Esq.


Marshall Passman


Sidney B. Wachtel

Executed:
~~Date of Decision:~~ July 17, 1991
Date of Decision: August 30, 1991