

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Dennis H. and Kathy D. Standridge

90-02902

Name of Respondents

Shearson Lehman Hutton, Inc.
Basil Hoag and
Unidentified employees or representatives of
Shearson Lehman Brothers, Inc.

REPRESENTATION

For Claimant: W. Kirby Lockhart, Esq., of Mitchell, Williams, Selig & Tucker.

For Respondents: Scott E. Daniel, Esq. of Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd.

CASE INFORMATION

Statement of Claim filed: October 17, 1990.

Claimant's Submission Agreement signed on: December 5, 1990.

Joint Statement of Answer filed by Respondents, Shearson Lehman Hutton, Inc. and Barry S. Hamilton on: February 28, 1991.

Respondent, Shearson Lehman Hutton, Inc.'s Submission Agreement signed on: February 8, 1991.

Respondent Barry S. Hamilton's Submission Agreement signed on: February 24, 1991.

Amended Statement of Claim filed: March 25, 1991.

Joint Answer to the Amended Statement of Claim filed by Respondents, Shearson Lehman Hutton, Inc. and Basil Hoag on: February 19, 1992.

The NASD does not have record of Basil Hoag's Submission to Arbitration.

HEARING INFORMATION

Hearing date: May 12, 1992. Session: 1

Hearing Location: Little Rock, Arkansas

CASE SUMMARY

Claimants Dennis H. Standridge and Kathy D. Standridge ("Claimants") alleged violation of Section 1 of Article III of the Rules of Fair Practice of the NASD; breach of fiduciary duty; negligent misrepresentation; and failure to follow explicit instructions by Barry S. Hamilton, ("Hamilton") a broker with Shearson Lehman Hutton, Inc., and Shearson Lehman Hutton, Inc. ("SLH"). The allegations arose out of transactions in the following funds: American Capital Pace Fund (CPF); and American Capital Reserve Fund ("ACRF"). Claimants stated that they had opened I.R.A. accounts with SLH in April of 1982. Claimants alleged that beginning on June, 1987, Claimant Dennis Standridge discussed with Hamilton moving Claimants' I.R.A. investments from ACPF, but were assured that getting out quickly was no problem, and that the investments were in good shape. Claimant further alleged that on October 14, 1987, Claimant Dennis Standridge telephoned SLH, and requested that Claimants be taken out of ACPF that day. The SLH representative allegedly agreed to do so. Moreover, Claimants alleged that as of October 10, 1987, they had not been moved out of ACPF, and allegedly were told, for the first time, by Hamilton that forms needed to be filled out for the transfer. On October 27, 1987, Claimants stated that they transferred their ACPF holdings for ACRF holdings.

In their joint Statement of Answer to the Statement of Claim, SLH and Hamilton ("Respondents") generally and specifically denied each and every allegation contained in the Statement of Claim, except that Respondents admitted that Claimants were customers of SLH and its Successor Shearson Lehman Brothers, Inc ("SLB"), and that Claimants had deposited funds in ACPF. In addition, Respondents specifically alleged that Hamilton had terminated his employment with SLH on April 15, 1987. Respondents also alleged that at all times relevant to this proceeding and in respect to all allegations made by the Claimants, Hamilton was neither working for or in any way employed by SLH nor its successors. Moreover, Respondents alleged that Claimants had not asserted any specific allegations against SLH as a separate Respondent, but only attempted to assert liability as a result of the acts of Hamilton which were alleged to have occurred in the scope of his employment. Therefore, Respondents alleged that since Hamilton was not employed by SLH at the time frame involved, SLH cannot be liable as alleged on the Statement of Claim. In addition, Respondents stated the following affirmative defenses:

1. The Statement of Claim and each and every cause of action alleged therein, fails to state claims upon which relief can be granted.
2. The Claimants failed to mitigate their damages by failing to directly request that ACPF transfer and/or liquidate their accounts. The Claimants were aware of their ability to make deposits and withdrawals on their own and possess the toll-free number of ACPF to effect such transactions or obtain any information necessary to do so.

2. The Claimants' claims are barred by the doctrines of estoppel, waiver, ratification and laches. The Claimants have directed no complaint to Hamilton, Hoag, SLH or its successors regarding the matters set forth in the Statement of Claim.

RELIEF REQUESTED

Claimants requested an award of \$10,545.68, together with costs, interest at the rate of ten (10) percent, attorney's fees and all other proper relief.

Respondents SLH and Hamilton requested that all claims of Claimants be denied, that the forum fees be assessed against the Claimants and that Respondents be granted all other just and proper relief.

In their joint Answer to the Amended Claim Respondents SLH and Hoag requested that all claims of Claimants be denied, that the forum fees be assessed against the Claimants and that Respondents be granted all other just and proper relief.

OTHER ISSUES CONSIDERED & DECIDED

The NASD does not have a record of Basil Hoag's Submission to Arbitration as required by Section 12 of the NASD Code of Arbitration Procedure even though the NASD does have on file the letter serving his joint Answer with Shearson Lehman Brothers, Inc. Basil Hoag has answered the Amended Statement of Claim, and appeared and testified, and is hereby bound by the decision of the undersigned Arbitrator.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants, Dennis H. Standridge and Kathy D. Standridge's Claims against Respondents Shearson Lehman Hutton, Inc. A/K/A Shearson Lehman Brothers, Inc., Barry S. Hamilton, Unidentified employees or representatives of Shearson Lehman Brothers, Inc., and Basil Hoag are hereby denied and dismissed with prejudice; and,
2. Each individual party shall bear their own costs of this arbitration.

3. The Claimants had full control over activity in their account losses, if any, were a result of market price fluctuations beyond the control and responsibility of the Respondents.
3. Any alleged losses by the Claimants were proximately caused by their own conduct or negligence and the Claimants are guilty of contributory negligence in relation to the transactions complained of and are precluded from recovery herein.
4. The Claimants' claims are barred by the doctrines of estoppel, waiver, ratification and laches. The Claimants have directed no complaint to Hamilton, Hutton or its successors regarding the matters set forth in the Statement of Claim.
5. Respondents affirmatively plead that there is no legal basis for granting attorneys fees regardless of the outcome of this proceeding. No agreement exists between the parties concerning the payment of attorneys fees and no law exists to justify the request that the Arbitrators dispense with the traditional American rule that each party in litigation should bar its own costs and attorney fees.
6. A private right of action does not exist for violations of the NASD Rules of Fair Practice.
7. The Respondents are still in the process of obtaining documentation concerning this matter and requests the right to amend their Response if pertinent information becomes available.

In their Amended Statement of Claim, Claimants named Basil Hoag ("Hoag"), Shearson Lehman Brothers, Inc. ("SLB"), and unidentified employees or representatives of SLB as Respondents. Claimants asserted that Hoag and Hamilton were included in the group of unidentified employees of SLB. Claimants reasserted their allegations set forth in the original Statement of Claim. In addition, Claimants alleged that neither Hamilton nor SLB informed them that Hamilton had terminated his employment. Claimants further alleged that because SLB and Hamilton had failed to notify them of the termination, they believed they had been dealing with Hamilton on the phone.

For their joint Statement of Answer, SLB f/k/a SLB and Hoag ("Respondents") generally and specifically denied the allegations in the Statement of Claim, except as admitted in the original joint Answer of SLB and Hamilton. Respondents alleged that Claimants at no time contacted any other employee of SLB by telephone or otherwise. Respondents further alleged that Hoag has never spoken to the Claimants. Moreover, Respondents alleged that since the Amended Statement of Claim failed to identify the person with whom the Claimants allegedly dealt. Without identifying said individual, it was alleged that Claimants' allegations were insufficient to place responsibility upon SLB or Hoag. In addition, Respondents asserted the affirmative defenses contained in the original answer filed by SLB and Hamilton except where they were changed by those listed below:

1. The Amended Statement of Claim and each and every cause of action alleged therein, fails to state claims upon which relief can be granted.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

1 hearing session X \$300.00 = \$300.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit for 1 Arbitrator in the amount of \$300.00 previously paid to the NASD by the Claimant.

The NASD shall refund to the Claimants Dennis H. Standridge and Kathy D. Standridge the sum of \$100.00 which constitutes the overpayment of the forum fee for this arbitration. (Claimants had previously sent a check for \$500.00. The filing fee and hearing session deposit for a case of this amount were \$400.00 total.)

Concurring Arbitrators' Signatures

Date:

May 29, 1992

/s/John L. Porter

John L. Porter
Chairman
Public Arbitrator