

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Eileen H. Loeffler, Indiv. & as TTEE)

Case No. 90-02966

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)
Thomas Silver)
Karl Loeffler)

REPRESENTATION

Claimant, Eileen H. Loeffler and Third Party Respondent Karl Loeffler:
Franklyn J. Wollett, Esq. of Hoolihan Hilleboe & Wollett, P.A.

Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Tom Silver
("Silver"): Richard Martens, Esq. of Boose, Casey, Ciklin, et al.

CASE INFORMATION

Statement of Claim filed: November 26, 1990. Claimants' Submission Agreement
signed on: October 4, 1990.

Respondents' Shearson and Silver's, Statement of Answer filed on: January 24,
1991. Respondents' Submission Agreement signed by Silver on October 21, 1991
and by Mary Reisert on behalf of Shearson on May 10, 1991.

Third Party, Karl Loeffler's Submission Agreement signed on December 10,
1991. Third Party Respondent, Karl Loeffler's Statement of Answer filed on
April 22, 1991.

HEARING INFORMATION

On December 10, 11, and 12, 1991 in Tampa, Florida, hearings lasting seven
sessions were conducted.

CASE SUMMARY

Claimants, alleged that Respondents were liable for: breach of fiduciary
duty; negligence; violation of Florida Statute 517.301; and misrepresentation
Claimant alleged that Silver's recommendation of leveraged purchases of
certain high yield bonds was not suitable for Claimant in light of her
investment objectives and Respondents failed to explain, and misrepresented,
the risks involved in trading on margin.

Respondents alleged that: the investments were in accord with Claimant's investment objectives; Claimant granted discretionary authorization to Karl Loeffler and agreed to indemnify and hold Respondents harmless from any losses arising from transactions in the account; Silver never recommended that Claimant purchase the particular bonds in question; Claimant's accounts were properly handled; and any losses were due to unforeseeable market conditions.

Respondents asserted affirmative defenses including: failure to state a cause of action; good faith and compliance with applicable rules and regulations; the damages have no causal relationship with any acts of Respondents; failure to mitigate damages; lack of reliance; waiver; the allegations fail to set forth a claim for punitive damages; New York law and the Due Process Clause of the U.S. Constitution preclude a recovery of punitive damages; and the claims are time barred.

Respondents asserted a Third Party Claim against Karl Loeffler for indemnification.

Third Party Respondent denied all allegations of wrongdoing and alleged that indemnification and contribution clauses in security agreements are not enforceable as a matter of public policy; interspousal immunity would prevent the operation of such a clause; and Respondents are estopped from asserting such a Third Party Claim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$371,477 plus interest, costs, attorney's fees pursuant to Section 517.211 of the Florida Statutes and punitive damages.

Respondents requested dismissal of the claim plus costs and filed a Third Party Claim for indemnification. Third Party Respondent requested dismissal of the Third Party 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 original(s) remain on file with the NASD.

AWARD

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. Respondents, Shearson and Silver, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's request for attorney's fees, costs and punitive damages is denied.
3. Third Party Respondent, Karl Loeffler, is found not liable and, therefore, all claims against him are hereby dismissed.
4. Respondents' request for costs is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5250.00 (7 sessions x \$750 per session). Claimant and Third Party Respondent are hereby assessed \$3937.50, jointly and severally, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof. Respondents, Shearson and Silver, are hereby assessed \$1312.50, jointly and severally. The NASD shall retain the \$750.00 previously deposited by Respondents in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/
Robert Hirschmann, Esq.

Public

/S/
Frank B. Preston, Esq.

Public

Dissenting Arbitrator Signature

Arbitrator, Sheldon Barat, dissents to the portion of the Award regarding forum fees and would allocate such fees in the amount of \$2625.00 against Claimant and Third Party Respondent, and \$2625.00 against Respondents, Shearson and Silver. Arbitrator Barat, otherwise concurs with the Award.

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Sheldon L. Barat

Industry

Date of Decision: January 17, 1992