

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))

Saul Bialilew)

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)
Alan Yarkin)

Case No. 90-03245

REPRESENTATION

For Claimant, Saul Bialilew ("Bialilew"): Marsha G. Madorsky, Esq.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Alan Yarkin ("Yarkin"): R. Lawrence Bonner, Esq. of Greer, Homer & Bonner, P.A.

CASE INFORMATION

Statement of Claim filed: November 15, 1990. Claimant's Submission Agreement signed: November 9, 1990.

Respondents' Statement of Answer filed: April 18, 1991. Respondents' Submission Agreements signed: July 23, 1991 by Alan Yarkin and by William A. Hobauser on behalf of Shearson on April 1, 1991.

HEARING INFORMATION

On January 23, 1992, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call without an arbitrator.

On March 26 and 27, 1992, in Fort Lauderdale, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Yarkin, made misrepresentations of and omitted to state material facts regarding an equity security; that, as a result of Claimant's justifiable reliance upon such misrepresentations and omissions, he suffered a loss; and, that Respondents' actions constituted violation of Section 517.301, Florida Statutes, common law fraud, negligent misrepresentation, breach of fiduciary duty, and negligent supervision.

Respondents denied all allegations of wrongdoing and alleged that Claimant was a sophisticated investor; was advised of and understood the risks of trading, made his own investment decisions; and, that Respondents investigated the contemplated trade, on behalf of Claimant, and made a good faith recommendation to buy.

Respondents alleged the affirmative defenses of assumption of risk; losses the result of market forces; losses the result of Claimant's own decisions; bar by waiver, ratification and estoppel; and, good faith.

Respondent, Shearson, filed a counterclaim and alleged that Claimant/Counter Respondent made a purchase of equity securities for which he did not pay; that he then sold the shares and retained the sales proceeds; and, that Bialilew is not entitled to such funds.

Claimant/Counter Respondent denied all allegations of wrongdoing and alleged the affirmative defenses of amount owed by Shearson exceeds counterclaim; set-off; in pari delicto; and, unclean hands.

RELIEF REQUESTED

Claimant requested damages in the amount of \$43,804.00, punitive damages of \$131,412.00, costs and attorney's fees.

Respondents requested dismissal. Shearson further requested damages on its counterclaim in the amount of \$16,625.00, plus interest and 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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson and Yarkin, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$43,804.00, plus interest at the legal rate of 12% per annum from December 1, 1989 to date of Award in the amount of \$12,265.12, for a total due to the Claimant of \$56,069.12. This amount shall be reduced by the set-off in the following paragraph.
2. Claimant/Counter Respondent, Bialilew, is found liable and shall pay to the Respondent/Counter Claimant, Shearson, the amount of \$16,625.00, plus interest at the legal rate of 12% per annum from February 21, 1989 to date of Award in the amount of \$6,146.26, for a total due to the Counter Claimant of

\$22,771.26. This amount shall be set off against the total amount due to Claimant from the Respondents in paragraph number 1, above, leaving a balance due to Claimant of \$33,297.86 (\$56,069.12 less \$22,771.26).

3. Respondents are also found liable, jointly and severally, for attorney's fees pursuant to Section 517.211, Florida Statutes. Claimant may seek a determination of the amount of such fees from a court of competent jurisdiction.

4. Respondents are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$15,000.00 for punitive damages. The Panel bases this Award for punitive damages upon its findings that Respondents' actions, including Shearson's lack of supervision, were grossly negligent.

OTHER COSTS

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 \$2,250.00 (three sessions x \$750.00). Respondents are hereby assessed \$2,250.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimant in reimbursement for the session deposits. Respondents shall pay \$1,500.00 to the National Association of Securities Dealers, Inc., less credit for the \$500.00 session deposit previously made, for a balance due of \$900.00. The NASD shall retain the \$750.00 session deposit made by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
Leonard H. Davidson, Esq.

Public/Industry

Public

/s/
Robert S. Natiss

Industry

/s/
Daniel Goodrum

Public

Date of Decision: April 6, 1992