

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Marlaine L. Johnson

90-03317

Name of Respondent(s)

Shearson Lehman Hutton, Inc.

Kae Ewing

REPRESENTATION

Claimant was represented by Ann Anderson, Esq..

Respondents were represented by Terry Ross, Esq..

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on November 21, 1990.

Claimant alleged breach of fiduciary duty, fraud, and misrepresentation in connection with securities transactions, including stock and mutual fund transactions and margin trading.

Respondents alleged that Claimant was aware that she was trading on margin, that Claimant vested Ewing with discretion over her account, that the stop/loss orders were employed to protect Claimant's investment, that Claimant was aware of transactions in her account, that Respondents are not responsible for any error in Johnson's tax returns, that Claimant ratified all activity in her account, and that Ewing's personal financial information is totally irrelevant to this proceeding. Respondents asserted twelve affirmative defenses.

RELIEF REQUESTED

Claimant requested an award 1) for \$176,000 representing the amount of the difference between the purchase amount and the sale amount of the "junk bond" fund; 2) for \$69,000 representing margin interest charged to Claimant's account as a result of the trading; 3) for at least \$64,000 representing commissions known to have been charged as a result of churning claimant's account and switching a mutual fund; 4) for an amount to be determined representing losses and illiquidity in Claimant's IRA account; 5) for \$8,000 representing overpayment of taxes due to misrepresentation of profits reported to IRS; 6) for approximately \$30,000 representing the difference between dividends and interest credited to the account and cash withdrawn from the account;

7) for interest on the foregoing amounts at the legal rate of 10% per annum; 8) for Claimant's legal fees pursuant to account agreements she signed, pursuant to Civil Code Section 1717; 9) for punitive damages in the amount of \$1,000,000; 10) for the costs of this proceeding; and 11) for such other and further relief as the arbitrators may deem appropriate. Respondents requested that the Statement of Claim be dismissed and that costs and disbursements be assessed against her.

AWARD

On July 30 and 31 and August 1 and 2, 1991 in Los Angeles, California during a hearing lasting eight sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 7, 1990, by Respondent Ewing on January 16, 1991, and by Lisa Columbo on behalf of Shearson Lehman Hutton Inc. on January 17, 1991.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

In accordance with Section 43c of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1,250 fee previously deposited by the Claimant (as an assessment of forum fees by the arbitrators). In addition, Respondents are jointly and severally assessed fees of \$7,000. Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS

Heard before:

Name

Public/Industry

Public

Public

Industry

Arbitrators Signatures


George Roy

Date of Decision: _____

Served 8/19/1991