

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frances A. Rogers

No. 91-00084

Name of Respondents

Shearson Lehman Hutton, Inc.
E.F. Hutton, Inc.
Robert Posa

REPRESENTATION OF PARTIES

For Claimant: Frances A. Rogers appeared pro se.

For Respondent: Andrew R. Harvin of Doyle, Reed, Restrepo,
Harvin & Robbins

CASE INFORMATION

Statement of Claim filed: January 7, 1991.

Claimant's Submission Agreement signed on: December 17, 1990
by: Frances A. Rogers.

Statement of Answer filed by Respondent Shearson Lehman Brothers,
Inc., successor in interest to E. F. Hutton & Company, Inc. and
Shearson Lehman Hutton, Inc. on: April 29, 1991.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement
signed on: April 15, 1991 by: William Hohausser, Vice-President.

Statement of Answer filed by Respondent Robert Posa: April 5,
1991.

Respondent Robert Posa's Submission Agreement signed June 10,
1991 by: Robert Posa.

First Amended Statement of Answer filed: August 23, 1991 by
Robert Posa.

HEARING INFORMATION

Hearing date: December 19, 1991. 3 sessions.

CASE SUMMARY

Claimant Frances A. Rogers ("Claimant") alleged unsuitable investments, excessive transactions, that her account was margined illegally due to alterations made to the margin agreement, and that management at Respondent Shearson Lehman Brothers, Inc. ("SLB") failed to supervise and/or cooperate with her to correct the problems with her account. Claimant further alleged that on or about September 1, 1987, she had given instructions to diversify her portfolio to Respondent Robert Posa ("Posa"), and she authorized the purchase of shares in Anheuser Busch Co.s, Bristol Meyers, and Eli Lilly. In addition to purchasing shares in these companies, it was alleged that Posa also purchased shares in Exxon Corp., Pillsbury Company, Quaker Oats Company, Toys-R-Us, Inc., UpJohn Company, Walmart Stores, Inc., Coca-Cola, and McDonalds Corporation. When Claimant went to SLB to correct the problems with her account, and to retrieve the remainder of her funds, SLB failed or refused to act and caused Claimant undue delay in transferring her funds from SLB.

In its Statement of Answer, SLB denied the material allegations contained in the Statement of Claim, and further denied any liability whatsoever to the Claimant. In addition, SLB stated the following defenses:

1. The losses realized on Claimant's stocks were caused directly by the market crash in October of 1987.
2. Claimant ratified all trades in her account and, thus, is barred from recovery;
3. Claimant, through her conduct and representations, has waived her right to maintain this action, and is estopped to assert her claims;
4. Claimant's claims are barred by the applicable statute of limitations, and under the doctrine of laches;
5. SLB particularly denies engaging in unauthorized trading or unauthorized "margin" buying; and
6. All of the securities purchased were suitable in light of Claimant's investment objectives and financial resources.

For his Statement of Answer, Posa denied the material allegations contained in the Statement of Claim, and further denied any liability whatsoever to the Claimant. In addition, Posa stated the following defenses:

1. The losses realized on Claimant's stocks were caused directly by the market crash in October of 1987.

2. Claimant was well aware of the risks of investing, and was well aware of the strategies employed on her behalf in her account at all times;

3. Prospectuses and confirmations of all transactions were mailed to the Claimant;

4. All trades were made with Claimant's prior approval, at her direction, and all trades were in line with her objectives;

5. Claimant ratified all trades in her account, and, thus, is barred from recovery;

6. Claimant, through her conduct and representations, has waived her right to maintain this action and is estopped to assert her claims;

7. Claimant's claim is barred by the applicable statute of limitations, and under the doctrine of Laches;

8. All of the securities purchased were suitable in light of Claimant's investment objectives and financial resources.

RELIEF REQUESTED

Claimant requested that the panel award her \$45,583.85 against Respondents SLB and Posa.

Respondent SLB requested that Claimant's claims be dismissed in their entirety, and that SLB be awarded their attorney's fees and costs.

Respondent Posa requested that Claimant's claims be dismissed in their entirety, and that Posa be awarded his attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondents SLB and Posa's motion to compel dated November 7, 1991, was renewed at the hearing. SLB requested statements of all of Claimant's accounts. Claimant stated that she had submitted all statements available to her. Respondents SLB and Posa accepted Claimant's statement and withdrew their request.

Respondents SLB and Posa also requested Claimant's tax returns for the years 1984 through 1988. Claimant stated that she had the returns, but was withholding them until she received the following documents from her own motion to compel dated August 5, 1991.

1. Broker and office complaint files.

a. The Chairman denied Claimant's request for the office complaint files, and also ruled that the Respondents were to produce Posa's complaint file to the panel to determine the relevancy before letting the Claimant review the file.

2. Respondent Posa's tax returns for the period Claimant invested with him.

a. After hearing argument from both parties, and deliberation, the Chairman denied this request.

The Chairman further ruled that the Claimant did not have to produce the requested tax returns until such time as the panel deemed them relevant to the hearing.

Respondents SLB and Posa renewed their motion to compel production of Claimant's tax returns during their cross-examination of the Claimant. After hearing argument from both parties, and deliberation, the panel denied Respondents SLB and Posa's motion.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed and denied as to Respondents Shearson Lehman Brothers, Inc. and Robert Posa; and

2. Each party shall bear their own costs related to this arbitration, except that the parties shall divide the hearing session fees equally as set forth more fully below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing sessions X \$400.00 = \$1,200.00

Forum fees in the amount of \$600.00 assessed jointly and severally against Respondents Shearson Lehman Brothers, Inc. and Robert Posa.

Forum fees in the amount of \$600.00 assessed against Claimant Frances Rogers. The NASD shall retainn the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant, leaving a balance due of \$200.00 for the Claimant's share of the hearing session fees.

The NASD shall also retain the nonrefundable filing fee in the amount of \$120.00 previously paid by the Claimant.

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

Dated:

January 22, 1992

/s/Michael E. McGown
Michael E. McGown
Presiding Chair
Public Arbitrator

January 29, 1992

/S/Woody W. Wilson
Woody W. Wilson
Public Arbitrator

January 16, 1992

/S/Robert H. Baker
Robert H. Baker
Industry Arbitrator