

Arbitration

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

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Wilkinson & Jenkins Construction Co., Inc

91-00274

Name of Respondent(s)

Shearson Lehman Hutton, Inc.

REPRESENTATION

For Claimant, Wilkinson & Jenkins Construction Co., Inc. ("Wilkinson"): Guy M. Burns, Esq. of Johnson, Blakely, Pope et al.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"): Howard Hertz, Esq. of Hertz, Schram & Saratsky.

CASE INFORMATION

Statement of Claim filed: January 25, 1991. Claimant's Submission Agreement signed on: January 3, 1991 by W.C. Wilkinson, Sr. on behalf of Wilkinson.

Respondent's Statement of Answer filed: June 11, 1991. Respondent, Shearson, did not file a Submission Agreement as required by Sections 12 and 25 of the Code, Respondent, Shearson, being an NASD member firm at the time this controversy arose.

HEARING INFORMATION

On February 18 and 19, 1992, in Tampa, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for misrepresentation and breach of fiduciary duty. Claimant alleged that Respondent was informed that it could only purchase very safe, liquid investments and that Respondent misrepresented the safety and liquidity of a certain limited partnership; and that such investment was not suitable for Claimant in light of Claimant's investment objectives.

Respondent denied all allegations of wrongdoing and alleged that Claimant desired investments with relatively high yield; Claimant received a prospectus and was informed of the risks involved in the investment; the account was non-discretionary; no misrepresentations were made; Claimant made other speculative investments; and Claimant was suitable for the investment.

Respondent asserted affirmative defenses of: failure to state a claim; comparative negligence; statute of limitations; waiver; estoppel; ratification; accord, satisfaction and release; statute of frauds; failure to mitigate damages; and assumption of risk.

RELIEF REQUESTED

Claimant requested damages in the amount of \$150,000.00 plus interest and costs.

Respondent requested dismissal of the claim plus costs and attorney's fees.

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. Respondent, Shearson, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's request for costs is denied.
3. Respondent's request for costs and attorney's fees is denied.

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 \$3,000.00 (4 sessions x \$500 per session). Respondent, Shearson, is hereby assessed \$3,000.00, \$750.00 of which shall be paid directly to the Claimant, and \$2,250.00 of which shall be paid to the National Association of Securities Dealers, Inc. Additionally, Respondent, Shearson is hereby assessed, and shall pay directly to Claimant, the \$200.00 filing fee previously deposited by Claimant. The NASD shall retain the \$950.00 previously deposited by Claimant in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Bruce A. Beery

Public

/s/
Joseph G. Lananna

Industry

Arbitrator, Louis Saxton dissents as to paragraph #1 of the Award and otherwise concurs in the decision.

/s/
Louis Saxton

Public

Date of Decision: March 12, 1992