

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Jack K. and Sharon A. Harms :

Claimants :

vs. :

CASE #91-00375

AWARD

Shearson Lehman Hutton, Inc. n/k/a :

Shearson Lehman Brothers, Inc. :

Donald M. Swift :

Respondents :

CASE SUMMARY

Jack K. and Sharon A. Harms, in a claim filed with the National Association of Securities Dealers, Inc. on February 4, 1991, alleged that Respondent Shearson Lehman Brothers, Inc. in Boston sold one (1) Compaq Computer July 60 call at 1 5/8 in their joint account when it should have been placed in Mr. Harms' IRA account. They state that their stockbroker instructed his assistant to have the account number error corrected through their wire room and Donald Swift, V.P. Adm. Compliance but that the correction was never made.

Respondents, in a joint Statement of Answer submitted by their counsel, William A. Hohauser, New York, NY, maintained that if any party is to be held liable to the Harms' it is Robert Milardo who was the former Shearson employee responsible for the Harms' accounts at the occurrence of the critical transaction. They issue a third party claim against Mr. Milardo and state that he has admitted that it was his mistake that led to the trade being placed in the joint account rather than the IRA account, and that Mr. Milardo failed to complete a trade error report and submit it to his supervisor. Shearson asserts that they and Mr. Swift acted at all times in a professional and ethical manner and in accord with all exchange and government regulations.

The Respondents failed to serve their third party claim on Robert Milardo as required by Section 13(d) of the Code of Arbitration Procedure or to submit the proper filing fee for their claim.

RELIEF REQUEST

Claimants request compensation for two hundred (200) shares of Compaq Computer or the sum of Nine Thousand Nine Hundred Ninety Dollars and No Cents (\$9,990.00) whichever is less.

Shearson Lehman Brothers, Inc. and Donald Swift request dismissal of the claim in its entirety, or in the alternative, they request an award against Robert Milardo plus costs and attorney's fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert L. Agosto, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 29, 1991 and not by the Respondents as required by Section 13(d) of the Code of Arbitration Procedure.

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That the Respondents', Shearson Lehman Brothers, Inc. and Donald M. Swift, request for a telephone hearing be, and hereby is, denied.
2. That Respondents', Shearson Lehman Brothers, Inc. and Donald M. Swift, third-party claim against Robert Milardo be, and hereby is, dismissed.
3. That the Claim of Jack K. and Sharon A. Harms be, and hereby is, denied in its entirety.
4. The parties shall bear their respective costs including attorney's fees.
5. The One Hundred Fifty Dollars and No Cents (\$150.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, ROBERT L. AGUSTO, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATED: 8/30/91