

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Aaron and Diane Rosenthal)

) Case No. 91-00481

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)
Allan Weber)

Heard before the members of the Arbitration Panel:

Robert Kasky, Esq.

Public

Robert L. Hudson

Public

Richard B. Frost

Industry

REPRESENTATION

Claimants, Aaron and Diane Rosenthal ("Rosenthals"), were represented by Russell L. Forkey, Esq. of Russell L. Forkey, P.A.

Respondents, Shearson Lehman Brothers, Inc ("Shearson") and Allan Weber ("Weber"), were represented by Lonnie Zangrillo, Esq. of Boose Casey Ciklin Lubitz Martens, et al.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 11, 1991. Claimants alleged that Respondents are liable for fraud and deceit, breach of fiduciary duty, negligence, breach of contract and negligent supervision; that Claimants had minimal investment experience; that Claimants' objectives were growth and preservation of capital; that Respondents made misrepresentations of and omitted to state material facts; and, recommended and effected trades in equity securities and mutual funds that were unsuitable for the Claimants.

Respondents filed a Statement of Answer with the NASD on April 23, 1991. Respondents denied all allegations of wrongdoing and alleged that Claimants had significant investment experience; and, that all investments were suitable. Respondents alleged the affirmative defenses of failure to state a claim; knowledge and assumption of risk; bar by ratification, account stated, estoppel, waiver and laches; failure to mitigate damages; loss caused by claimants' conduct; failure to timely notify Respondents; statute of limitations; no entitlement to lost damages; and, no breach of fiduciary duty.

RELIEF REQUESTED

Claimants requested damages or rescission in the amount of \$28,000.00, interest, costs and other relief.

Respondents requested dismissal and costs.

AWARD

On November 5, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on February 8, 1991, by Weber on April 17, 1991 and signed on April 18, 1991 by William A. Hohouser on behalf of Shearson.

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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.
2. Respondent, Weber, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondent, Shearson, is found liable and shall pay to the Claimants the amount of \$1,652.48, plus interest at the legal rate of 12% per annum from September 15, 1986 to date in the amount of \$1,024.54 for a total due to the Claimants of \$2,677.02.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,200.00 (three sessions x \$400.00). Claimants are hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited in full satisfaction thereof. Respondent, Shearson, is hereby assessed \$800.00, \$120.00 of which shall be paid directly to the Claimants, and \$680.00 of which shall be paid to the National Association of Securities Dealers, Inc.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
Robert Kasky, Esq.

/s/
Robert L. Hudson

/s/
Richard B. Frost

Date of Decision: November 18, 1991