

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Clark K. Sampson

vs

NASD #91-00769

Shearson Lehman Hutton, Inc.
Burnham Smith

REPRESENTATION

Jack G. Orr, Esq. - Harris Orr & Wakayama for Claimant

Thomas C. Sand, Esq. - Miller, Nash, Wiener, Hager &
Carlsen for Respondent, Shearson Lehman Hutton, Inc.

David A. Thompson, Esq. - Moore & Thompson for Respondent
Burnham Smith

CASE INFORMATION

Second Amended Statement of Claim filed: March 26, 1992

Claimant's Submission Agreement signed on: December 26, 1990

Statement of Answer filed by Respondent, Shearson Lehman Hutton on May 8,
1991

Statement of Answer filed by Respondent, Burnham Smith on May 13, 1991

HEARING INFORMATION

Pre-Hearing Conferences: January 3, 1992 - One Session
March 23, 1992 - One Session

Hearing Dates/Sessions: April 7, 1992 - Two Sessions
April 8, 1992 - Two Sessions
April 9, 1992 - Two Sessions

Hearing Location: Seattle, Washington

CASE SUMMARY

Claimant, Clark K. Sampson (Sampson) alleged that Respondent, Burnham Smith (Smith), while employed by Respondent, Shearson Lehman Hutton, Inc. (SLH), recommended that Sampson purchase Raleigh Energy and Powdered Metal Ltd stock. Smith failed to disclose certain material facts in connection with the transactions and Smith and SLH owed a duty to Sampson in connection with the purchases. Said transactions were completely unsuitable in light of Sampson's financial conditions.

Sampson also alleged that Smith told him that the Raleigh deal was an "outside deal" and that SLH had nothing to do with it. Said disclosure was made well after the purchases were made. Sampson alleged that based upon the ongoing course of conduct, he had reason to believe that the transactions were, in fact, authorized and approved by SLH.

Respondent, Shearson Lehman Hutton, Inc., alleged that the disputed transactions occurred totally outside of SLH and without the knowledge of any SLH management employee and lacking said knowledge, denies it can be held responsible to Sampson for any loss resulting from such transactions.

Respondent, Burnham Smith, alleged that he never acted as Sampson's broker in the transactions at issue; earned no commissions, and in no way benefited as the result of Sampson's investments. Smith alleged that he and claimant were close personal friends and that he was acting at the specific requests of Sampson.

RELIEF REQUESTED

Claimants requested: Recovery for damages in the amount of the Raleigh purchases, plus interest, plus lost income, together with any commissions paid to the defendants, or anyone else in connection with purchases urged by the respondents, all in an amount to be proven, but which in any event exceeds \$100,000.00; treble damages for violation of the Washington Consumer Protection Act, costs and attorney's fees.

Respondent, Shearson Lehman Hutton, Inc. requested: Dismissal of the claim in its entirety plus costs.

Respondent, Burnham Smith requested: Dismissal of the claim in its entirety plus costs.

OTHER ISSUES CONSIDERED AND 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. Respondents, Shearson Lehman Hutton, Inc., and Burnham Smith are jointly and severally liable and shall pay to Claimant, Clark K. Sampson, the sum of Sixty One Thousand, Seven Hundred Sixty Two Dollars and Fifty Cents (\$61,762.50) plus interest at the rate of 10% per annum commencing thirty days after the service of this award until said award is paid in full.

2. Respondents, Shearson Lehman Hutton, Inc., and Burnham Smith, are jointly and severally liable and shall pay to Claimant, Clark R. Sampson, the sum of \$12,500.00 in attorneys' fees pursuant to the provisions of the Washington State Securities Act, RCW 21.20.430.

3. The NASD shall retain the \$950.00 previously deposited by the Claimant.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Forum fees Assessed Against Respondents, jointly and severally, in the amount of \$5,100.00 representing fees for two pre-hearing conferences at \$300.00 each and six regular hearing sessions at \$750.00 per session.

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

ARBITRATION PANEL

Name


Public/Industry

Harry E. Jennings, Jr.
Herbert H. Freise, Esq.
Gordon S. Powell

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

DATE SERVED: 05/13/92


Herbert H. Freise, Esq.

Date of Decision: 4-20-92