

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Judy Van Nocker

PUBLIC

91-00771 7

Name of Respondents

Shearson Lehman Brothers, Inc.  
Michael Maley

REPRESENTATION

Claimant Judy Van Nocker ("Claimant") was represented by Robert Anderson, Esq. of Nemas and Anderson.

Respondents Shearson Lehman Brothers, Inc. and Michael Maley ("Respondents") were represented by Walter J. Piaszczeniowski, Esq. of Hartz, Schman & Saretsky, P.C.

CASE INFORMATION

Statement of Claim filed on: March 7, 1991.

Claimant's Submission Agreement signed on: March 6, 1991.

Joint Statement of Answer filed by Respondents on: July 25, 1991.

Respondent Shearson Lehman Hutton, Inc.'s Submission Agreement signed on: August 8, 1991.

Respondent Michael Maley's Submission Agreement signed on: August 2, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: June 10, 1992, 2 sessions  
June 11, 1992, 2 sessions  
June 22, 1992, 1 session

Hearing Location: American Arbitration Association  
Southfield, Michigan

CASE SUMMARY

Claimant alleged that Respondents instructed and advised Claimant to invest in limited partnerships that were unsuitable for Claimant's investment objectives and financial position, and Respondents violated the NASD Rules of Fair Practice. Claimant further alleged that Respondent Michael Maley placed Claimant in unsuitable investments for his own personal gain and not for the benefit of the investor, and he appeared at Claimant's place of employment and requested she loan him money, in violation of NASD Rules of Fair Practice. Claimant further alleged Respondent Shearson Lehman breached its duty to supervise the activities of Respondent Michael Maley.

Respondents maintained that Claimant indicated to Respondent Michael Maley that she wished to invest money she inherited from her mother's death so it would be available upon her retirement, and that she was interested in longer term, income oriented investments and liquidity was not required. Respondents further maintained that Respondent Michael Maley explained to Claimant money invested in limited partnerships would not be available until the limited partnership was sold and Claimant again stated she was looking toward retirement and not immediate cash gain; but, shortly before filing her claim, Claimant was laid off and saw a need for immediate liquidity. Respondents further maintained that Claimant had the burden of establishing Respondent Michael Maley knowingly or recklessly recommended unsuitable investments and she was aware all investments present some risk of loss.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$85,000 and attorneys fees.

Respondents requested that all claims by Claimant be dismissed in their entirety and an award of costs and attorneys fees.

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. The Respondents be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$35,000; which includes interest to the date of the award.
2. Respondent Shearson Lehman Hutton, Inc. shall become the owner of the following investments listed below; however, before receiving payment of the award, Claimant shall cause to be assigned all of her interest and the interest of any other party who may be named on the account in and to the following investments to Shearson which shall include all present interest and any interest that may accrue in the future. The investments are described as follows:

Jiffy Lube Income Limited Partnership; Balcor Colonial Storage 85 Limited Partnership; Matterhorn Commodity Partners Fund II Limited Partnership; Commodity Trend Timing II Limited Partnership; Balcor Pension Investment IV Limited Partnership. The panel has determined that all the above investments were unsuitable investments for Claimant given her circumstances at the time.

3. Claimant shall retain the ownership of the following investment and shall be free to make such disposition of it as she desires:

Shearson Portfolio Sector Analysis Mutual Fund.

4. The panel finds that the defense asserted by the Respondent, relying upon the statute of limitations, does not preclude recovery as set forth in the award.
5. Each party shall bear their own costs and attorneys fees.

FORUM FEES

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

5 sessions X \$500 = \$2,500 minus hearing session deposit of \$500 = \$2000 net due.

The Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$2000 to represent forum fees.

The NASD shall retain the \$150 filing fee and \$1500 hearing session deposit previously deposited by the Claimant.

The Respondents jointly and severally shall pay to the Claimant the sum of \$650 to reimburse her for her fees paid.

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

Concurring Arbitrator's Signature:

Name

Public/Industry



Bruce K. Case, Esq.

Industry Arbitrator

Date of Decision: August 21, 1992

Jiffy Lube Income Limited Partnership; Balcor Colonial Storage 85 Limited Partnership; Matterhorn Commodity Partners Fund II Limited Partnership; Commodity Trend Timing II Limited Partnership; Balcor Pension Investment IV Limited Partnership. The panel has determined that all the above investments were unsuitable investments for Claimant given her circumstances at the time.

3. Claimant shall retain the ownership of the following investment and shall be free to make such disposition of it as she desires:

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4. The panel finds that the defense asserted by the Respondent, relying upon the statute of limitations, does not preclude recovery as set forth in the award.
5. Each party shall bear their own costs and attorneys fees.

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Name

Public/Industry

  
Harry A. Carson, Esq.

Public Arbitrator

Date of Decision: August 21, 1992

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Name

Public/Industry

  
Martin B. Breighner, Esq./Chairman

Public Arbitrator

Date of Decision: August 21, 1992