

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Danton D. Wirth

91-00824

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

Claimant was represented by John D. Phillips, Esq. and A. Peter Gregory, Esq. of Hall & Evans, Denver, Colorado.

Respondent was represented by John S. Lutz, Esq. and Elizabeth A. Bryan, Esq. of Kelly, Stansfield & O'Donnell, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about March 18, 1991.

Claimant's Submission Agreement signed on March 1, 1991 by Danton D. Wirth.

Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. f/k/a E.F. Hutton & Co., Inc. on or about May 24, 1991.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed by William A. Bohauer.

HEARING INFORMATION

The hearing was held on Tuesday, March 10, 1991 in Denver, Colorado for total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent made written and verbal representation regarding the positive and healthy financial condition of the investment NOBERO I Limited Partnership and failed to disclose to him the poor performance of the limited partnership property in the previous two years. Claimant also alleged that Respondent failed to provide him with financial documentation relating to the two years prior to the investment in violation of the Colorado Securities Act.

Respondent denied the allegations of misrepresentation and stated that

Claimant was a sophisticated investor and knew the risks of his investment. Respondent specifically stated that this investment was consistent with the stated investment objectives of the Claimant and that he knowingly invested in this high risk investment. Respondent also asserted the following affirmative defenses: the statement of claim fails to state a case of action upon which relief can be granted; respondent acted in good faith and did not directly induce the alleged act or acts, if any, constituting the alleged violations of law; authorization, assumption and acceptance of the risk; estoppel; waiver; ratification; failure to mitigate; laches; collateral estoppel; res judicata; accord and satisfaction; and contributory negligence.

RELIEF REQUESTED

Claimant requested an award in the amount of \$72,534.00 plus accrued interest, attorney's fees and exemplary damages in the amount of \$150,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety and assess any costs and fees incurred in this matter against Claimant.

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 Lehman Brothers, Inc. shall be and hereby is liable for and shall pay to the Claimant Danton D. Wirth the sum of \$72,534.00 (Seventy Two Thousand Five Hundred Thirty Four Dollars) which sum represents the principal investment of the Claimant.
2. Interest in the amount of \$16,302.98 (Sixteen Thousand Three Hundred Two Dollars and Ninety Eight Cents) is awarded herein. In calculating the interest the panel awarded simple interest at the rate of 8% per annum from the dates of principal payments to and inclusive of March 26, 1992. Interest at the rate of \$15.89 (Fifteen Dollars and Eighty Nine Cents) is awarded from and inclusive of March 27, 1992 to and inclusive of the date this award is paid in full.
3. No punitive or exemplary damages are awarded herein.
4. Claimant Danton D. Wirth shall transfer title to the investments complained of herein upon receipt of the full amount of the sums awarded herein.

5. Each party shall bear it's own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant as forum fees. Respondent Shearson Lehman shall pay to the NASD the sum of \$750.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any.

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

Dated:

May 4, 1992

s/s

Daniel C. Himelspanch, Esq.
Presiding Chair
Public Arbitrator

May 5, 1992

William H. Long
Public Arbitrator

May 3, 1992

Richard Reider
Industry Arbitra'

NASD decision rendered: May 14, 1992