

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ronald and Margie Kinsey

91-00844

Name of Respondent

Shearson Lehman Hutton, Inc.

REPRESENTATION

For Claimant: Ronald Kinsey

For Respondent: Therese Obringer of Neal Gerber & Eisenberger

CASE INFORMATION

Statement of Claim filed: March 19, 1991

Claimant's Submission Agreement signed on: March 7, 1991

Statement of Answer filed by Respondent on: April 30, 1991

Respondent's Submission Agreement signed on: April 15, 1991

HEARING INFORMATION

Hearing Date/Sessions: September 16, 1991 - ~~two~~^{one} sessions

Hearing Location: Louisville, KY

CASE SUMMARY

Claimants Ronald and Margie Kinsey ("Claimants") alleged that their stockbroker, James Chestnut ("Chestnut"), who was an agent for Respondent

Shearson Lehman Hutton, Inc. ("Respondent"), placed Claimants in unsuitable investments. Claimants alleged that Chestnut failed to explain the risks associated with Claimants' investments. Claimants alleged that Chestnut never explained what a margin account was nor did the Claimants give Chestnut or Respondent permission to trade their account on margin. Claimants further alleged that Chestnut executed unauthorized trades in their account. Claimants alleged that their account was traded in a manner to enrich Respondent and Chestnut at the expense of the Claimants. Claimants alleged that because of Respondent's improper handling of their account by the Respondent's agent, Claimants' account suffered monetary losses.

Respondent categorically denied all wrongdoing alleged by the Claimants and specifically maintained that Claimants were aware that they had a margin account and that they executed a Client Agreement authorizing Respondent to open a joint margin account for them. Respondent maintained that all trades in Claimants' account were suitable and met with their objective of appreciation with risk and income with risk. Respondent maintained that Claimants were sent all monthly account statements and confirmation slips. Respondent maintained that although Claimants now allege that the purchases in their account were made without their authorization, Claimants did not raise any objections or complaints regarding transactions in their account earlier.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$10,000.00.

Respondent requested that Claimants' claim be dismissed in its entirety.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

See Exhibit A Attached.

FORUM FEES

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

Claimants are assessed forum fees in the amount of \$3⁹⁰. Claimants are

entitled to offset this amount with their hearing session deposit of \$300.00, so that 70 is due from the Claimants.

Respondent is assessed forum fees in the amount of \$0.

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

ARBITRATOR

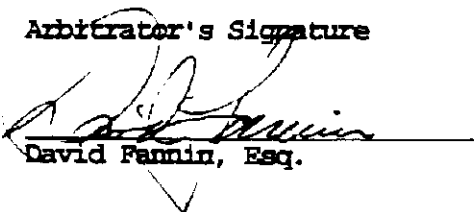
Name

Public/Industry

David Farmin, Esq.

Public Arbitrator

Arbitrator's Signature


David Farmin, Esq.

Date of Decision: Sept. 18, 1991

Dated by the NASD, Inc: September 30, 1991

EXHIBIT A

Attached to and forming a part of the NASD Award in the case Ronald and Margie Kinsey v. Shearson Lehman Hutton, Inc., 91-00844.

The Arbitrator is persuaded that Mr. and Mrs. Kinsey were not advised by their broker, David Chestnut, at the time he worked for Prudential Bache Securities, as to the facts regarding trading in their account. Specifically, it seems clear that Mr. and Mrs. Kinsey did not understand the nature of a margin account and did not know that they were purchasing securities on margin. It is also found that Mr. Chestnut intentionally misled Mr. and Mrs. Kinsey as to the nature of trading in their account in response to questions posed to him by them.

Mr. and Mrs. Kinsey testified that they placed their complete faith and trust in Mr. Chestnut and did not question any of his activities or statements to them. However, they did acknowledge receiving monthly statements as well as confirmation statements of trades in their account. They state that they did not understand the nature of these documents. The Arbitrator finds, however, that Mr. and Mrs. Kinsey, while not sophisticated, did not lack the capability to read and understand the statements which were sent to them. If they did not know, they should have known, that there was substantial trading in their account. Their comparisons to a bank deposit account are misplaced. They certainly knew enough to know that the statements they were receiving were not like any bank statement they ever had received.

Although Mr. and Mrs. Kinsey should have been aware of what was happening in their account, and although Mr. Chestnut certainly would be found liable to the Kinseys were he a party to this Arbitration, and although there might have been sufficient evidence to impose liability on Mr. Chestnut's former employer, Prudential Bache (also not a party to the arbitration), the circumstances with respect to Shearson Lehman Hutton, Inc. are not as clear cut. Shearson's witness, Mr. Casey, testified that there was no procedure to double check every account which came to Shearson at the time Mr. Chestnut joined that firm. Although a review of the account would have disclosed that the Kinseys were not appropriate investors for trading on margin, they did transfer a margin account when they moved from Prudential Bache to Shearson. It seems reasonable to the arbitrator that Shearson might conclude that parties who previously had been purchasing securities with margin loans were willing to continue to do so.

Mr. and Mrs. Kinsey present a very sympathetic case. They testified that they had invested their "life savings" with Mr. Chestnut. They clearly put a great deal of trust in him, and he breached that trust. Unfortunately, neither Mr. Chestnut nor the brokerage firm for which he worked at the time of the initial difficulty was before the Arbitrator. From the testimony presented, there is no reason to believe that Shearson Lehman Hutton, Inc. knew, or had reason to know, of the special circumstances involving the Kinseys. The Arbitrator believes that if the Kinseys had not placed their trust completely in Mr. Chestnut and had made inquiry

regarding the extensive transactions reflected on their monthly statements, as well as on confirmation slips, this matter would have been brought to the attention of Shearson and steps would have been taken to prevent further losses. Mr. and Mrs. Kinsey should have followed up on the information available to them, and they failed to do so. Under the circumstances, the Arbitrator feels that he cannot make an award against Shearson Lehman Hutton, Inc. Opinion is reserved as to what the outcome might have been had Mr. Chestnut and/or Prudential Bache been parties to these proceedings.



DAVID C. FANNIN, Sole Arbitrator

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