

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Arnold L. Rosen

91-01264

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Alan Yarkin

REPRESENTATION

For Claimant, Arnold Rosen ("Rosen"): Michael R. Casey, Esq. of Casey & Molchan.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Alan Yarkin ("Yarkin"): Ronald Shindler, Esq. of Fowler, White, Burnette et al.

CASE INFORMATION

Statement of Claim filed: April 22, 1991.

Claimant's Submission Agreement signed on: February 20, 1991.

Respondents' Statement of Answer filed on: June 24, 1991. Respondents' Submission Agreements signed by Yarkin on June 21, 1991, and by William Bohouser, Esq. on behalf of Shearson on June 3, 1991.

HEARING INFORMATION

On January 23 & 24, 1992, in Fort Lauderdale, Florida hearings lasting five (5) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: common law fraud; negligent safekeeping and investment of Claimant's Assets; negligent supervision; breach of fiduciary duty; violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act. Claimant alleged that Respondent, Yarkin misrepresented the safety of a certain stock and that the stock would meet Claimant's investment objectives.

Respondents denied all allegations of wrongdoing and alleged that Claimant is an experienced and knowledgeable investor; and Claimant previously invested in Securities other than municipal bonds.

Respondents alleged the affirmative defenses of: failure to state a claim; assumption of risk; contributory negligence; failure to mitigate damages; statute of limitations; failure to exercise due diligence; lack of proximate cause; ratification; waiver; estoppel; and Claimant is not entitled to recover punitive damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$47,345.75 plus interest, costs and punitive damages.

Respondents requested dismissal of the claim plus costs, fees and expenses.

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, is found not liable and, therefore, all claims against it are hereby dismissed.

2. Respondent, Yarkin, is found liable and shall pay to the Claimant the amount of \$15,250.

3. Claimant's request for costs and punitive damages is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,500.00 (5 sessions x \$500.00 per session). Respondent, Yarkin, is hereby assessed \$2,500.00, \$500.00 of which shall be paid directly to the Claimant, and \$2,000.00 of which shall be paid directly to the National Association of Securities Dealers, Inc. Additionally, Respondent, Yarkin, is hereby assessed and shall pay directly to Claimant the \$150.00 filing fee. The NASD shall retain the \$650.00 previously deposited by Claimant in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

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Steven D. Elias, Esq.

Public

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Richard E. Skute

Public

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Seymour Roberts

Industry

Date of Decision: MARCH 3, 1992