

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

MAY 29 1992

In the Matter of the Arbitration Between

Name of Claimants

Bruce A. & Linda O. Polizotto

91-01386

Name of Respondents

Shearson Lehman Hutton, Inc.
Robert D. Damigella
Lawrence J. Green

REPRESENTATION OF PARTIES

For Claimants: Mark E. Maddox, Esq. of Coons & Saint,
Indianapolis, Indiana.

For Respondents: Robert J. Mandel, Esq. of Neal Gerber &
Eisenberg, Chicago.

CASE INFORMATION

Statement of Claim filed May 3, 1991.

Claimant's Submission Agreement signed on April 29, 1991.

Joint Statement of Answer filed by Respondents on July 10, 1991.

Respondents Shearson Lehman Hutton, Inc. and Lawrence J. Green's
Submission Agreements signed on July 8, 1991. Respondent Robert
D. Damigella's Submission Agreement signed on July 1, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: December 18, 1991 for two (2) sessions.
December 19, 1991 for two (2) sessions.
January 27, 1992 for two (2) sessions.
January 28, 1992 for two (2) sessions.

Hearing Location: Indianapolis, Indiana.

CASE SUMMARY

Claimants Bruce and Linda Polizotto ("Claimants") alleged that Respondents Shearson Lehman Hutton, Inc., Manager Lawrence Green, and Agent Robert Damigella (collectively "Respondents") engaged in conduct which amounted to fraud in the purchase and sale of securities, violations of Section 10(b) and Rule 10(b)(5) as well as Section 15 of the Securities Exchange Act of 1934, and violations of Indiana Code 23-2-1-12.

More specifically, Claimants alleged that they are relatively unsophisticated equity investors, and that Respondents, in connection with Claimant's account with Shearson Lehman Hutton, Inc. churned the account, breached their fiduciary duties, purchased investments which were unsuitable for the Claimants, over-leveraged the account, misrepresented and omitted, and failed to supervise. Claimants further alleged that they purchased securities which Damigella recommended such as America West Airlines, Inc., 3 COM, and Great American Communications, and in which Shearson made a market that produced higher commissions for himself and Shearson.

Respondents generally denied the allegations set forth in the Statement of Claim. Respondents alleged that the Claimants generally agreed with Damigella's recommendations but only after independently considering the financial information that Damigella provided. Respondents further alleged that a review of the actual trading in the account fails to support the Claimant's assertion that Claimant's were induced to make larger investments on margin for the purpose of generating commissions.

RELIEF REQUESTED

Claimants requested \$39,100.00 on the 3 COM transactions, approximately \$19,000.00 on the America West Airlines transactions, and approximately \$166,000.00 on the Great American Communications transactions for a total loss of approximately \$224,100.00 plus reimbursement of their losses, plus interest of ten percent (10%) per annum, reasonable attorney's fees, and expenses, costs of the arbitration, and punitive damages of \$750,000.00 to deter Respondents from engaging in this pattern of conduct in the future, and for all other relief available to Claimants under applicable laws and regulations.

Respondents requested that the Claimant's Statement of Claim be dismissed in its entirety.

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 originals 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. The Claimant's claim against Respondent Lawrence J. Green shall be and hereby is dismissed. The Claimant did not prove his case against Respondent Green;
2. Respondents Robert Damigella and Shearson Lehman Hutton, Inc. are jointly and severally liable for and shall pay to the Claimant Polizotto damages as follows:
 - a. "Hidden commissions" in the sum of Twelve Thousand Two Hundred and Fifty Dollars (\$12,250.00) plus interest accrued at a rate of eight percent (8%) annually, which figure comes to Two Thousand Five Hundred Eighty Four Dollars and Thirty Three Cents (\$2,584.33) as of April 1, 1992 and increases at the rate of Two Dollars and Sixty Eight Cents (\$2.68) per day until the judgment is paid;
 - b. Claimant's attorney's fees in the sum of Forty Three Thousand Dollars (\$43,000.00). The panel awarded attorney's fees under the authority of Indiana law;
3. Respondent Shearson Lehman Hutton, Inc., shall be individually liable for and shall pay to the Claimant Polizotto punitive damages equal to a multiple of two (2) times the total actual damages outlined in 2. above, up to a maximum of One Hundred Fifty Thousand Dollars (\$150,000.00). The panel awarded punitive damages under the following authority:

Albright, et al., v. Edward D. Jones & Company, (Cause No. 25001-8908 CP-00260);
Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 2d-25 (1983);
Garrity v. Lyle Stuart, Inc., 353 N.E. 2d 793

(1976); School City of East Chicago v. East Chicago Federation of Teachers, 422 N.E. 2d 656 (Ind. App. 1981); In the Matter of the Arbitration between William H. Pyule v. Securities U.S.A., Inc., 758 F.Supp. 638 (Colo. 1991); Raytheon Company v. Automated Business Systems, 882 F.2d 6 (1st Cir.1989); and Willoughby Roofing and Supply Co. v. Kajima International Inc., 498 F. Supp. 353 (N.D. Ala 1984), aff'd on opinion 776 F. 2d 269 (11th Cir. 1985).

As to the panel's reasoning: The panel thought that the actual harm to Claimant resulted from Respondent's failure to notify Claimant of the possible conflict of interest that may result from selling stocks with so-called hidden commissions, rather than from losses resulting from stock purchases whose value decreased over time. It was the panel's view that the ongoing nature and impetus of these sales efforts on the part of Respondent likely resulted from Respondent's failure to take full fiduciary responsibility for Claimants' interest as opposed to interest in his own welfare.

Further, it is the Panel's view that in both its training and oversight of Respondent Damigella and in its construction of confirmations that mask such commissions, Respondent Shearson Lehman Hutton, Inc., has breached its responsibility to its clients by failing to train its agents in their ethical and fiduciary responsibilities to their clients and in being a party to practices that are deceptive in result if not in intent.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

8 hearing sessions X \$1000.00 = \$8000.00 minus hearing session deposit of \$1000.00 = net \$7000.00 due.

Forum fees Assessed against: Respondents Shearson Lehman Hutton, Inc. and Robert Damigella, jointly and severally.

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Respondents shall jointly and severally reimburse to the Claimant Polizotto the non-refundable filing fee and the hearing session deposit previously deposited with the NASD in the total amount of \$1250.00.

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

By The Arbitration Panel:

Dated:

Bruce M. Fingerhut
Bruce M. Fingerhut, Chairperson
Public Arbitrator

6/2/92

Donald G. Fletcher
Donald G. Fletcher
Public Arbitrator

Bernard Lally
Bernard Lally
Industry Arbitrator

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