

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Dennis and Sheila Diecidue

Case No. 91-01397

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Larry Sizeler

REPRESENTATION

For Claimants, Dennis and Sheila Diecidue ("the Diecidues"): Albert M. Salem, Jr. of Albert Salem & Associates, P.A.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Larry Sizeler ("Sizeler"): Howard Hertz, Esq. of Hertz, Schram & Saretsky, P.C.

CASE INFORMATION

Statement of Claim filed: May 3, 1991. Claimants' Submission Agreement signed: August 30, 1991.

Respondents' Joint Statement of Answer filed: July 2, 1991. Respondent, Shearson's, Submission Agreement signed: July 10, 1991 by William Hohausser, Esq. on behalf of Shearson.

Respondent, Sizeler, did not file a Submission Agreement as required by Section 25 of the Code.

HEARING INFORMATION

On December 11, 1992, a telephone conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On May 20; September 2 and 3; December 15, 16, and 17, 1993 in Tampa, Florida, hearings lasting 14 sessions were conducted.

CASE SUMMARY

Claimants alleged that they were unsophisticated investors who relied upon Respondents' expertise to make conservative and relatively safe investments for them. Claimants stated that despite their stated investment objectives of conservative and low-risk investments, Sizeler purchased for their accounts, from April 1987 through October 24, 1988, Western Savings & Loan common stock ("WSL"), which Claimants claimed is a high risk stock. Claimants alleged that the WSL stock continuously decreased in value until the company was taken over by the Federal Home Loan Bank Board and Claimants' total investment was lost. Claimants further alleged that Respondent, Shearson, failed to supervise its employee, Sizeler.

Respondents denied each and every allegation of wrongdoing and denied liability of any kind to Claimants. Respondents maintained that Claimants were fully apprised of the risk of the investments at issue and voluntarily assumed the risk and authorized all purchases in their accounts.

RELIEF REQUESTED

Claimants requested an award of \$47,679.09 plus interest, costs and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that Respondents be awarded their costs, including attorneys' fees and such other relief as the Panel deems appropriate.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Sizeler, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent, Shearson, is found liable and shall pay to the Claimants the amount of \$15,247.70, including pre-judgment interest, plus post-judgment interest at the rate of 12% per annum from the date of the Award to the date of payment of the Award.
3. Claimants' requests for attorneys' fees and costs are denied.

4. All other Claims are denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,900.00 (one pre-hearing conference x \$300.00, plus 14 sessions x \$400.00).

1. Claimants are hereby assessed \$2,950.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$2,550.00.
2. Respondents, Shearson, is hereby assessed \$2,950.00 payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John P. Cullem, Esq.

Public/Chairman

/s/

Joseph I. Amonette

Industry/Panelist

/s/

John F. Howes

Public/Panelist

Date of Decision: April 19, 1993