

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John Aubry and Irene Aubry, JTWROS

No. 91-01529

Name of Respondents

Shearson Lehman Hutton, Inc.
Wilson Rodini

REPRESENTATION OF PARTIES

For Claimants: Bruce M. Jancovic of Jancovic & Punticelli.

For Respondents: Robert J. Kuker of Neal Gerber & Eisenberg.

CASE INFORMATION

Statement of Claim filed: May 16, 1991.

Claimant's Submission Agreement signed on: May 14, 1991.

Joint Statement of Answer filed by Respondents Shearson Lehman Hutton, Inc. and Wilson Rodini: July 29, 1991.

Respondent Wilson Rodini's Submission Agreement signed on: January 10, 1992.

The NASD does not have a record of Respondent Shearson Lehman Hutton, Inc. having filed a Submission Agreement.

HEARING INFORMATION

Hearing date: January 10, 1992. 2 sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants John Aubry and Irene Aubry ("Claimants") alleged that Shearson Lehman Hutton, Inc. ("SLH") and Wilson Rodini ("Rodini") were guilty of one or more of the following acts in violation of Rule 10b-5 of the Security Exchange Commission:

1. The investment schemes recommended by Rodini were unsuitable to the stated goals of the investors;
2. Respondent Rodini misrepresented or failed to state pertinent facts concerning the inherent risks in the types of investment schemes recommended, and particularly in light of the use of the margin account in order to leverage purchases of those investments;
3. Rodini misrepresented or failed to state pertinent facts concerning the risk of the use of the margin account to leverage purchases of investments;
4. Rodini drew the Claimants into a series of transactions designed to increase the buying and selling of securities for purposes of brokerage profits; and
5. Respondent Rodini held himself out as an expert and gained the reliance of Claimants in investment activities dominating the relationship without regard to the interests and goals of the Claimants.

The alleged violations complained of were based on the transactions for Claimants account in the following securities: Ryder Systems; Texaco; Americus Trust/IBM; Racal Electronics; Americus Trust/Johnson and Johnson; Freeport Resource; and Americus Trust GTE.

In their joint Statement of Answer, Respondents SLH and Rodini denied that they were guilty of any impropriety whatsoever with regards to Claimant's account. Respondents SLH and Rodini further alleged that: Claimant's realized exactly what was happening in their account; and Claimants made a deliberate and unhurried decision to invest in more speculative securities and fully appreciated the risks inherent in such investments.

RELIEF REQUESTED

Claimant's requested damages in the amount of \$28,523.01 as compensatory damages for sums lost as a result of the acts of the

Respondents SLH and Rodini; the sum of \$1,126.67 plus interest thereon or such other charges as may be claimed against the Claimants by the Respondents or, in the alternative, cancellation of that indebtedness; and lastly, for punitive damages in such amounts as may be determined by the arbitration panel if the findings of fact warrant same.

Respondents SLH and Rodini requested that the arbitrators enter an award finding that these Respondents have no liability in this dispute.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Shearson Lehman Hutton, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. Claimants John Aubry and Irene Aubry's claims against Respondents Shearson Lehman Hutton, Inc. and Wilson Rodini are hereby denied and dismissed; and
2. The hearing costs for this arbitration shall be paid equally by both parties as set forth more fully below.

FORUM FEES

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

2 hearing sessions X \$400.00 = \$800.00

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimants.

Forum fees in the amount of \$400.00 are assessed jointly and severally against Respondents SLH and Rodini.

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

Concurring Arbitrators

Dated:

February 28, 1992

/s/Alan S. Farnell
Alan S. Farnell
Presiding Chair
Public Arbitrator

March 3, 1992

/s/Charles B. Melby
Charles B. Melby
Public Arbitrator

February 18, 1992

/s/Thomas S. Wilson
Thomas S. Wilson
Industry Arbitrator