

N.A.S.D. AWARD

APR - 9 1992

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Faith M. Hughes (formally Faith M.  
Coldwell)

and

91-01552

Name of Respondents

Shearson Lehman Brothers, Inc. f/k/a  
E.F. Hutton & Co., Inc. and David Lee Healey

REPRESENTATION OF PARTIES

Claimant was represented by Robert D. Mitchell, Esq. of Galbut & Associates, Phoenix, Arizona.

Respondents were represented by Jesse B. Simpson, Esq. and Robert F. Roos, Esq. of Lewis and Roca, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about May 21, 1991. The amended and Restated Statement of Claim was filed on or about August 20, 1991.

Claimant's Submission Agreement signed on April 23, 1991.

Respondents Shearson Lehman Brothers, Inc. and David Lee Healey filed their Response to Amended and Restated Statement of Claim on or about September 23, 1991.

Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on July 8, 1991 by Mary E. Reisert.

Respondent David Lee Healey's Submission Agreement signed on September 26, 1991.

HEARING INFORMATION

A pre-hearing conference was held on Wednesday, March 4, 1992, presided over by Thomas Tobin, Esq. and Robert A. Williams lasting one (1) session. The parties agreed that this session would be presided over by the two public arbitrators without an industry arbitrator present.

A second pre-hearing conference was held on Tuesday, March 10, 1992, presided over by the undersigned arbitration panel lasting one (1) session.

The hearing was held on Wednesday, March 11, 1992 for two (2) sessions, Thursday, March 12, 1992 for three (3) sessions, Friday, March 13, 1992 for three (3) sessions, Saturday, March 14, 1992 for three (3) sessions, Sunday, March 15, 1992 for two (2) sessions and Monday, March 16, 1992 for two (2) sessions in Scottsdale, Arizona for a total of seventeen (17) sessions.

#### CASE SUMMARY

Claimant alleged that her accounts were mishandled and churned by the Respondents; that all of the investments in her accounts were unsuitable for her in light of her investment objectives and needs; that Respondents' conduct violated applicable exchange and NASD rules, rule 10(b)(5) of the Securities Exchange Act of 1934, and the federal and Arizona RICO statutes. Claimant further alleged that the Respondents did not fairly deal with her and charged unfair and excessive commissions and that their conduct constituted common law fraud; intentional misrepresentation; breach of fiduciary duty; and intentional infliction of emotional distress. Claimant invested in limited partnerships, bond mutual funds and Unit Investment Trusts.

Respondents denied the allegations set forth in the Amended and Restated Statement of Claim. Respondents specifically stated that the investments were suitable for the Claimant in light of her investment objectives, all material risks were disclosed to the Claimant, that the accounts were not churned, that the costs of the investments were carefully discussed with the Claimant, and that the illiquid nature of certain investments was discussed with the Claimant prior to the investment. Respondents further stated that most of the investments all performed according to expectations. Respondents asserted the following affirmative defenses: ratification, waiver, estoppel, and laches.

#### RELIEF REQUESTED

Claimant requested an award in the amount of \$272,879.23 in compensatory damages, a return of the \$37,652.39 in commissions charged, treble damages pursuant to A.R.S. Sec. 13-2314, punitive damages in the amount of \$250,000.00, unspecified damages for pain and suffering and emotional distress, post-award interest, attorney's fees and costs, including expert witness fees.

Respondents requested that the claims asserted against them be dismissed and that they be awarded their reasonable attorney's fees and costs.

#### OTHER ISSUES CONSIDERED & DECIDED

After hearing the arguments of the parties regarding the Motion to Dismiss Jeffrey Hughes as a party claimant in this matter during the conference held on March 4, 1992, Arbitrators Tobin and Williams unanimously ruled to dismiss Mr. Hughes as a party claimant.

After hearing the arguments presented by the respective parties regarding Respondents' motion to exclude testimony concerning polygraph tests, the motion was granted and the evidence concerning polygraph tests was excluded.

At the conclusion of the claimant's case in chief, Respondents asserted a Motion for a Directed Verdict concerning the allegations of emotional distress. After considering the arguments presented on behalf of the parties the panel denied the motion.

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. Respondents Shearson Lehman Brothers, Inc. and David L. Healey shall be and hereby are jointly and severally liable for and shall pay to the Claimant Faith M. Hughes the sum of \$43,000.00.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.
3. No punitive damages awarded herein.

#### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain/refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$7,750.00 as forum fees. Respondents Shearson Lehman Brothers, Inc. and David L. Healey shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$8,500.00 as forum fees. Forum fees are calculated at the rate of \$1,000.00 per hearing session. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

April 6, 1992

APRIL 6, 1992

Thomas F. Tobin  
Thomas F. Tobin, Esq.  
Presiding Chair Public Arbitrator

Robert A. Williams  
Robert A. Williams  
Public Arbitrator

Leon G. Mackey  
Leon G. Mackey  
Industry Arbitrator

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Thomas F. Tobin, Esq.  
Presiding Chair Public Arbitrator

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Robert A. Williams  
Public Arbitrator

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*Leah G. Mackey*  
Leah G. Mackey  
Industry Arbitrator

March 27, 1992