

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

William Vogelbaugh

91-01595

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
Michael Bruce Hall  
Virgil Rorer  
Joseph A. DelDuca

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**REPRESENTATION**

For Claimant, William Vogelbaugh ("Vogelbaugh"): Joel Goodman, Esq. of Goodman and Nekvasil, P.A.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson"), Michael Bruce Hall ("Hall"), Virgil Rorer ("Rorer") and Joseph DelDuca ("DelDuca"): Robert Williams, Esq. of Williams, Reed, Weinstein, et al.

**CASE INFORMATION**

Statement of Claim filed: May 22, 1991. Claimant's Submission Agreement signed: May 16, 1991.

Respondents', Shearson, Hall, Rorer and DelDuca's, Statement of Answer filed: July 8, 1991. Respondents' Submission Agreements signed: July 3, 1991 by DelDuca, July 24, 1991 by Hall, July 23, 1991 by Rorer, and on July 3, 1991 by Joseph DelDuca on behalf of Shearson.

**HEARING INFORMATION**

On February 13, 1992, in Tampa, Florida, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On February 19, 20 and 21, 1992; April 19, 20, 21 and 22, 1993 and July 6 and 7, 1993, in Tampa, Florida, hearings lasting 17 sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that Respondents were liable for: violations of Section 10(b), Rule 10b-5 and Section 17(a) of the Securities Exchange Act; violations of Section 517.211 of the Florida Statutes; breach of contract; common law fraud; breach of fiduciary duty; negligence; civil theft; and, violations of the Florida and Federal Rico Acts. Claimant alleged that Hall put Claimant into highly speculative, unsuitable options trading without advising Claimant of the risks involved in options trading or of trading on margin and churned the account.

Respondents denied all allegations of wrongdoing and alleged that: the trades were conducted at Claimant's initiative and Claimant was advised of the risks involved.

Respondents alleged the affirmative defenses of: failure to state a claim; estoppel; waiver; Claimant was negligent in not availing himself of the opportunity of ascertaining the truth of the facts relating to his account; failure to exercise reasonable care to mitigate his damages; ratification; lack of reliance; lack of proximate cause; good faith; consent; Claimant's demand for punitive damages violates the U.S. Constitution; and, the Federal RICO Act is unconstitutionally vague.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$132,223, plus interest, costs, treble and punitive damages, and attorney's fees.

Respondents requested dismissal of the claim, plus costs, and attorney's fees.

### **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. Respondents, Rorer and DeDuca, are found not liable and, therefore, all claims against them are hereby dismissed.

2. Respondents, Shearson and Hall, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$150,000 inclusive of interest.
3. Respondent, Hall, is found liable, individually, and shall pay to Claimant the further amount of \$70,000 inclusive of interest.
4. Respondents, Shearson and Hall, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$30,000 for attorney's fees pursuant to Section 517.211, Florida Statutes. The Panel bases its authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
5. Claimant's request for costs, treble damages, and punitive damages is denied.
6. Respondents' request for attorney's fees and costs is denied.

#### **OTHER COSTS**

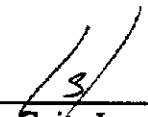
The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### **FORUM FEES**


1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$17,300 (one pre-hearing conference x \$300 plus 17 sessions x \$1,000 per session).
2. Respondents, Shearson and Hall, are hereby assessed \$17,300, jointly and severally, \$1,250 of which shall be paid directly to the Claimant, and \$16,050 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$250 paid by the Claimant.
4. The NASD shall retain the session deposit of \$1,000 paid by Claimant, as well as the \$250 overpayment deposited by Claimant, as partial satisfaction of the forum fees.

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

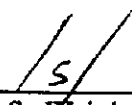
Concurring Arbitrators' Signatures

  
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George S. Coit, Jr., Esq.

Public

  
\_\_\_\_\_  
James F. Turner, III

Public

  
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Dan G.S. Wright

Industry

Date of Decision: August 6, 1993