

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

Name of Claimant

Malcolm E. Thompson

91-01624

Name of Respondents

Shearson Lehman Brothers, Inc.
David C. Donaldson, Jr.

REPRESENTATION

For Claimant Malcolm E. Thompson ("Claimant"): Susan N. Perkins, a sole practitioner.

For Respondents Shearson Lehman Brothers, Inc. ("Shearson") and David C. Donaldson, Jr. ("Donaldson"): Samuel A. Turvey, of Shearson.

CASE INFORMATION

Statement of Claim filed: May 22, 1991.

Claimant's Submission Agreement signed on: May 13, 1991.

Joint Statement of Answer filed by Respondents on: there was no date on this document; however, it was received by the NASD on August 5, 1991.

Respondent Shearson's Submission Agreement signed on: August 2, 1991.

Respondent Donaldson's Submission Agreement signed on: August 2, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: January 28, 1992/2 sessions

January 29, 1992/2 sessions

February 7, 1992/2 sessions

March 17, 1992/2 sessions.

Hearing Location: NASD, New York City, NY.

CASE SUMMARY

Claimant alleged Donaldson intentionally misled Claimant into investing in an unsuitable investment (namely the Shearson Lehman Hutton High Yield Taxable Series 15, a Unit Investment Trust ("UIT")); pursued his own and Shearson's interests before Claimant's; churned Claimant's holdings in the Shearson Select Managers Program; and made fraudulent representations. Claimant alleged Shearson failed to oversee Claimant's account; failed to know its customer; failed to exercise compliance oversight and supervision of

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Donaldson; and permitted Donaldson to make unsuitable investments.

Respondents alleged Donaldson suggested Claimant invest in government bonds and/or conservative income funds; however, Claimant's wife stated she wanted money placed into growth investments. Respondents stated Donaldson explained the risks involved in the UIT investment. Respondents denied the account was churned or that any fraud, misrepresentations or mismanagement of the account occurred. Shearson denied any failure to supervise or failure to know its customer.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$377,394.28; punitive damages in the amount of \$100,000.00; interest to run from July 7, 1988 at the rate of nine (9%) percent to the date the award is fully paid; attorneys' fees; and expert witness fees.

Respondents requested: they denied that any damages, interest, attorneys' fees; punitive damages or any other relief is due to Claimant.

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 original remains 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 Respondents Shearson Lehman Brothers, Inc. and David C. Donaldson, Jr. be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$70,027.00, inclusive of interest;
- 2- All other claims are denied;
- 3- Each party shall bear its own costs, including attorneys' fees.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee and the following Forum Fees are assessed.

8 sessions X \$750.00 = \$6,000.00 minus hearing session deposit of \$750.00 net \$5,250.00 due.

Forum fees Assessed Against:

1- The Claimant be and hereby is liable and shall pay to the NASD, Inc. the sum of \$2,625.00 to represent forum fees and the Respondents Shearson Lehman Brothers, Inc. and David C. Donaldson, Jr. be and hereby are liable, jointly and severally, and shall pay to the NASD, Inc. the sum of \$2,625.00 to represent forum fees.

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

Concurring Arbitrators' Signatures


Murray I. Sommer/Public Arbitrator


Joseph F. Kelley/Public Arbitrator


Milton P. Aeder/Industry Arbitrator

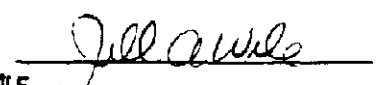
Date: March 18, 1992

STATE OF New York

S.S.:

COUNTY OF New York

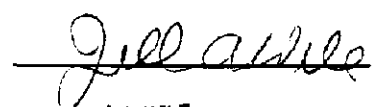
On this 18th day of March, 1992, before me personally appeared Murray I. Sommer known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


JILL A. WILE
NOTARY PUBLIC, State of New York
No. 4678615 S.S.:
Qualified in Nassau County
Commission Expires Dec. 15, 1992

STATE OF New York

COUNTY OF New York

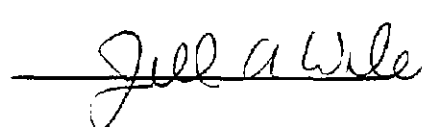
On this 18th day of March, 1992, before me personally appeared Joseph F. Kelley known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


JILL A. WILE
NOTARY PUBLIC, State of New York
No. 4678615 S.S.:
Qualified in Nassau County
Commission Expires Dec. 15, 1992

STATE OF New York

COUNTY OF New York

On this 18th day of March, 1992, before me personally appeared Milton P. Aeder known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


JILL A. WILE
NOTARY PUBLIC, State of New York
No. 4678615
Qualified in Nassau County
Commission Expires Dec. 15, 1992