

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Cynthia L. & John W. Mayhew

91-02381

Name of Respondent(s)

Johnston, Lemon & Co. Inc.  
William Smith

REPRESENTATION

For Claimant: Morris J. Levin, Esq. of Washington, D.C.

For Respondent Johnston, Lemon & Co., Inc: Douglas Spaulding, Esq. and Kathleen McGuan, Esq. of Reed, Smith, Shaw & McClay in Washington, D.C.

Respondent William Smith appeared pro se.

CASE INFORMATION

Statement of Claim filed: August 2, 1991.

Submission Agreement of the Claimants signed on: July 31, 1991.

Statement of Answer filed by Respondent Johnston, Lemon & Co., Inc. on: September 23, 1991.

Statement of Answer filed by Respondent William Smith on: October 11, 1991.

Submission Agreement of Respondent Johnston, Lemon & Co., Inc. signed on: September 23, 1991.

Submission Agreement of Respondent William Smith signed on: October 9, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: February 24, 1992/two sessions  
February 25, 1992/two sessions  
March 14, 1992/three sessions  
March 15, 1992/three sessions  
March 16, 1992/two sessions

April 23, 1992/two sessions  
April 24, 1992/two sessions  
April 25, 1992/two sessions  
May 11, 1992/two sessions  
May 12, 1992/two sessions

Hearing Location: Washington, D.C.

#### CASE SUMMARY

Claimants John Mayhew and Cynthia Mayhew alleged that Respondents Johnston, Lemon & Co., Inc. and William Smith perpetrated frauds against Claimants and breached their fiduciary duty to Claimants. Claimants alleged that Respondents made an unsuitable recommendation in Delta Capital Management Limited Partnership and did not consider their investment objectives. Claimants further alleged that Respondents engaged in churning of their account. Respondents Johnston, Lemon & Co., Inc. and William Smith denied all allegations of wrongdoing and maintained that all investments for Claimants were made consistent with their investment objectives. Respondents also maintained that all investments for Claimants' accounts were suitable.

#### RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,000,000.00, lost profits, punitive damages, RICO treble damages, reasonable attorneys' fees and costs incurred in bringing the arbitration. Respondent Johnston, Lemon & Co., Inc. requested that the claims of the Claimants be dismissed and that costs be borne by the Claimants and asserted a cross-claim for indemnification against Respondent William Smith. Respondent Johnston, Lemon & Co., Inc. also asserted a Motion to Dismiss pursuant to Section 16 of the Code of Arbitration Procedure. Respondent William Smith requested that the claims of the Claimants be dismissed and that costs be borne by the Claimants. Respondent William Smith also asserted a Motion to Dismiss or Stay Proceedings for failure of the Claimants to state a cognizable claim against him.

#### OTHER ISSUES CONSIDERED & DECIDED

- (1) 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.
- (2) The cross-claim of Johnston, Lemon & Co., Inc. against William Smith was accepted by the panel at the initial hearing in this matter pursuant to Section 39 of the Code of Arbitration Procedure.

(3) Individuals John M. LeFrere and William H. Gregory, III were initially named as Respondents by the Claimants in this proceeding. The NASD determined subsequently that the NASD did not have jurisdiction over these Respondents, and they were removed as parties to the proceeding.

(4) The cross-claim of Johnston, Lemon & Co., Inc. against Paula Michaels was not accepted by the panel pursuant to Section 39 of the Code of Arbitration Procedure.

(5) The Motion to Consolidate of Respondents to consolidate this instant case with case number 92-00218 - Steven J. Agresta et al. vs. Bill Smith vs. Johnston, Lemon & Co., Inc. et al. was denied by the panel.

**NASD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(1) Respondent Johnston, Lemon & Co., Inc. is liable and shall pay to the Claimants John and Cynthia Mayhew the sum of One Hundred Sixty Four Thousand Eight Hundred Seventy Five Dollars and Fifty Cents (\$164,875.50).

(2) Claimants John and Cynthia Mayhew shall transfer to Respondent Johnston, Lemon & Co., Inc. One Sixth (1/6) of the total shares of all the classes of common and preferred stock received by Claimant as a result of the liquidation of Delta Capital.

(3) Respondent Johnston, Lemon & Co., Inc.'s cross-claim against Respondent William Smith is denied in its entirety.

(4) The Motion to Dismiss of Respondent William Smith is denied.

(5) The Motion to Dismiss of Respondent Johnston, Lemon & Co., Inc. is denied.

(6) The arbitration panel will do a disciplinary referral to the NASD recommending that a review of the supervisory procedures of Johnston, Lemon & Co., Inc. be done by the NASD, Inc.