

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Howard E. & Helen Evans

vs.

Case #
91-02731

Name of Respondents

Shearson Lehman Brothers, Inc.
Gary H. Cohen
Christopher J. Bonnar

REPRESENTATION

Claimants, Howard E. & Helen M. Evans ("Claimants") were not represented by counsel.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Gary H. Cohen ("Cohen"), Christopher P. Litterio, Esq. from the law firm of Shapiro, Israel & Weiner, P.C.

Respondent, Christopher J. Bonnar ("Bonnar"), was not represented by counsel.

CASE INFORMATION

Statement of Claim was filed on August 30, 1991.

Claimant's Submission Agreement was signed on September 23, 1991.

Joint Statement of Answer was filed by Shearson and Cohen on July 6, 1992.

Shearson's Submission Agreement was signed on May 6, 1992.

Cohen did not execute a Submission Agreement.

Bonnar's Statement of Answer was filed on March 2, 1992.

Bonnar's Submission Agreement was signed on March 2, 1992.

HEARING INFORMATION

Hearing Date/Hearing Session: November 3, 1992 - One session.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimants allege that their broker, Bonnar, improperly handled their account and caused him to sustain losses. Claimants allege that they asked their Bonnar to sell their Colonial Government Securities holdings and that Bonnar failed to follow their instruction and only sold 423 of their 850 shares. Claimants state that when they tried to sell their E.F Hutton Condo Real Estate Limited Partnership interest, Cohen told them that the investment was illiquid and that they should wait for the partnership to disband and for the proceeds to be distributed to the investors. Claimant contend that Bonnar did not disclose this information to them.

Additionally, Claimants allege that not all of their funds invested in penny stock investments were used to buy the stock and that some of the funds went towards payment of commissions.

Shearson and Cohen deny any allegation of wrongdoing by themselves or by Shearson's predecessor, E.F. Hutton, and Cohen. Respondents state that all funds deposited by Claimants were used to purchase securities for their account. Said Respondents state that Claimants did not lose money on the Colonial Government Securities trades. Respondents also state that Claimants' \$4,000.00 investment in the penny stocks was reduced to \$3,000.00 due to market conditions and commissions paid. Respondents also state that prior to the purchase of the real estate limited partnership, Claimants were advised of the illiquidity of the investment and they agreed to the purchase.

Shearson and Cohen contend that any losses sustained by Claimants were a result of Claimants' investment decisions and market conditions. Respondents also assert six affirmative defenses, including the fact that the claims are barred by the statute of limitations.

Bonnar denies liability for Claimants' losses. He acknowledges that all of Claimants' Colonial Government Securities Fund investment were not sold when requested but adds that Claimants were able to liquidate the funds by going directly to Colonial group. Bonnar states that Claimants made a \$4,000.00 investment in penny stocks and that it is conceivable that after market movement and commissions, they lost \$1,000.00. Bonnar contends that he clearly explained the limited partnership's lack of liquidity and other information contained in the prospectus which was given to the Claimants. Bonnar alleges that when Claimants told him to sell the limited partnership, he listed them immediately. Bonnar also states that on at least two

occasions he had Mr. Evans in his office to discuss his account statements and answer questions.

RELIEF REQUESTED

Claimant requests a total award of \$20,000.00.

Respondents request that the claim be dismissed in all respects and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

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

1. The claims asserted by Claimant against Respondents are dismissed based upon the fact that they are barred by the Statute of Limitations. Additionally, Claimants failed to prove any damages.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed against the Claimants.

1. \$100.00 non-refundable filing fee.
2. 1 session X \$300.00 = \$300.00 minus hearing session deposit of \$300.00.
3. Claimants previously deposited \$400.00 which shall be applied to the fees assessed.

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Arbitrator's Signature



Warren D. Hutchison, Esq.
Sole Public Arbitrator

Executed on:

~~Date of Decision~~

12/1/92

Date of Decision: December 17, 1992.