

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Lyons F. Barker)

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)

Case No. 91-02991

REPRESENTATION

For Claimant, Lyons F. Barker ("Barker"): Louis H. Lang, Esq. of Callison Tighe Robinson & Anastasion.

For Respondent, Shearson Lehman Hutton, Inc. ("Shearson"): Cory Holmbaum, Esq. of Kennedy Covington Lobdell & Hickman.

CASE INFORMATION

Statement of Claim filed: September 23, 1991. Claimant's Submission Agreement signed: September 16, 1991.

Respondent's Statement of Answer filed: January 9, 1992. Respondent's Submission Agreement signed: February 2, 1992 by Ann Parry on behalf of the firm.

HEARING INFORMATION

On September 10, 1992, in Charlotte, North Carolina, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent's agent violated Rule 405 of the New York Stock Exchange and Article 3 Section 2 of the NASD Code, by failing to ascertain the goals and financial wherewithal of the Claimant; that Respondent failed to properly train oversee and supervise its agent in his dealings with the Claimant; that the agent, by his actions and his statements to the Claimant, violated Rules 401, 435(5), 352(b) and 472 of the New York Stock Exchange and that all of those actions constituted unethical business practices and constituted a breach of Shearson's fiduciary duty to the Claimant in connection with Respondent's purchase of of Bally stock for Claimant. Claimant further alleged that all representations made by Shearson's agent were false or were made with reckless disregard, resulting in damages and injury to the Claimant.

Respondent denied all allegations of wrongdoing and maintained that the Claimant fully understood the risks associated with his investment, that the

AWARD-#91-02991

investment risk was communicated to Claimant, that at no time did Respondent fail to follow Claimant's instructions and that there is no evidence of any wrongful conduct by Shearson or its agent.

RELIEF REQUESTED

Claimant requested an award of actual damages in the amount of \$24,791.00 plus punitive damages in an equal amount for a total \$49,582.00 plus interest at the legal rate and reasonable attorney's fees.

Respondent requested dismissal of the Claim.

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. Respondent, Shearson, is found not liable and, therefore, all claims against it are hereby dismissed;
2. Claimant's requests for attorney's fees and punitive damages are denied.

OTHER COSTS

The parties shall each bear all 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 \$800.00 (two sessions x \$400.00 per session).

Respondent, Shearson, is hereby assessed forum fees in the amount of \$800.00 \$400.00 of which shall be paid directly to the Claimant and the remaining \$400.00 to be paid to the NASD, Inc.

2. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.

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

WARD-91-02991

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

James Edward Neal
(Public/Chairman)

/s/

Louis M. Davis
(Industry/Panelist)

/s/

Simone Sicola
(Public/Panelist)

Date of Decision October 13, 1992