

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Rebecca S. Liptak)

Name of Respondent(s))

Shearson Lehman Hutton, Inc.)

Case No. 91-03072

REPRESENTATION

For Claimant, Rebecca S. Liptak ("Liptak"): A. Grant Bohl of db Management, Inc.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"): Brian Joslyn, Esq. of Boose, Casey, Ciklin, et. al.

CASE INFORMATION

Statement of Claim filed: October 1, 1991. Claimant's Submission Agreement signed: December 10, 1991.

Respondent's Statement of Answer filed: February 14, 1992. Respondent's Submission Agreement signed: February 10, 1992 by Ann Parry on behalf of Shearson.

HEARING INFORMATION

On August 12, 1992, in Tampa, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for: churning; mutual fund switching; unauthorized trading; placing Claimant into unsuitable limited partnership; breach of fiduciary duty; that the broker had a conflict of interest with Claimant; misrepresentation and omission; and, failure to supervise.

Respondent denied all allegations of wrongdoing and alleged that: Claimant incurred no damages as a result of any action by Respondent; Claimant's liquidation of many securities in her accounts caused the over-concentration in certain investments; the trades Claimant refers to as evidence of churning occurred in seven accounts over a period of two and one half years; all trades were authorized by Claimant; and, Claimant was suitable for all trades.

Respondent alleged affirmative defenses including: failure to state a claim; lack of proximate cause; ratification; estoppel; Claimant's negligence; and that the existence of a contract between Claimant and Respondent precludes all tort based claims.

RELIEF REQUESTED

Claimant requested damages of \$25,162.00 which included costs and her advocate's fee and she requested interest and punitive damages.

Respondent requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimant's Motion to Bar Evidence Pursuant to Section 32(c) of the NASD Code of Arbitration Procedure and Claimant's postponement request were denied.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrator has 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 request for advocate fees and costs is denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$600.00, (two sessions x \$300.00 per session).
2. Claimant is hereby assessed \$600.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$200.00.
3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

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

Arbitrator's Signature


James R. Kennedy, Jr., Esq.

Public

Date of Decision:

9-29-92