

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Wallace, Barbara, Brent & Robin Klein)	
)	
<u>Name of Respondent(s)</u>)	Case No. 91-03360
)	
Shearson Lehman Hutton, Inc.)	
Elizabeth Jarrard)	
)	

REPRESENTATION

For Claimants, Wallace, Barbara, Brent and Robin Klein ("the Kleins"): James E. Aker, Esq. of Icard, Merrill, Cullis, Timm, et. al.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson"): Dana A. Donahue, Esq. of Hertz, Schram & Saretzky, P.C.

For Respondent, Elizabeth Jarrard ("Jarrard"): Audrey Rauchway of Mastry, Marger, Davis, et. al.

CASE INFORMATION

Statement of Claim filed: October 24, 1991. Claimants' Submission Agreement signed: November 30, 1991.

Respondents, Shearson and Jarrard's, Statements of Answer filed: February 21, 1992. Respondents' Submission Agreement signed: February 12, 1992 by Jarrard, and on February 24, 1992 by William Hobauser, Esq. on behalf of Shearson.

HEARING INFORMATION

On July 9, 17 and 18, 1992, in Tampa, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for Jarrard's failure to advise Mr. Klein that the price of UAL stock had come down and was at, or near, his break even point and, as a result of Jarrard's failure to so inform Mr. Klein, he was forced to purchase additional shares of the stock at higher prices to cover his short sales. Claimants alleged that Respondents were liable for breach of fiduciary duty.

Respondents denied all allegations of wrongdoing and alleged that Jarrard attempted to contact Mr. Klein when the stock approached the break even point, but Mr. Klein was out of town and Jarrard could not contact him.

Respondents alleged affirmative defenses including that: Mr. Klein was a sophisticated investor; the transactions were in accord with Claimants' investment strategy; Mr. Klein made his own investment decisions; failure to mitigate damages; failure to state a claim; statutes of limitations; statute of frauds; laches; waiver; estoppel; ratification; satisfaction and discharge; failure of consideration; contributory negligence; assumption of risk; and, market conditions were responsible for Claimants' losses.

RELIEF REQUESTED

Claimants requested damages of \$88,252.16 plus interest, costs and fees.

Respondents requested dismissal of the claim plus costs and attorney's fees.

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. Respondents, Shearson and Jarrard, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorney's fees and costs is denied.
3. Respondents' requests for attorney's fees and costs are denied.

OTHER COSTS

1. The parties shall each bear all other 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 \$2,000.00 (four sessions x \$500.00 per session).
2. Claimants are hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$500.00.

3. Respondent, Shearson, is hereby assessed \$1,000.00 payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/S/
Richard J. Jones, III, Esq.

Public

/S/
Regar Mickler

Industry

/S/
John F. Geraci

Public

Date of Decision: November 4, 1992