

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Edward C. Aselman, Jr. :

Claimant :

CASE #91-03411

AWARD

vs. :

Shearson Lehman Hutton, Inc. :

Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 30, 1991, Claimant Edward C. Aselman, Jr. who appeared Pro Se, alleged that on September 1, 1988 Respondent Shearson Lehman Hutton, Inc., by and through their financial advisor, Mr. Charlie Cooper, recommended and induced him to purchase two Flexible Premium Adjustable Life insurance policies for a long term investment to supplement his retirement income by misrepresenting its future benefits. Claimant further alleged that Respondent, by and through Mr. Cooper advised him that such an investment would provide tax-free income at retirement and that no income from the life insurance policy would be included with his other retirement income. Claimant contended that Respondent advised him that the life insurance investment was a better investment than putting \$300.00 a month into his existing annuity account because the annuity account is taxed. Claimant further contended that Respondent informed him that this type of tax-free income would amount to a huge tax savings and offset the cost of the insurance. Claimant asserted that Respondent highlighted the tax-free loan aspects of the life insurance policies, urging Claimant to purchase quickly before any law was passed because if he purchased now he would be protected by a "Grandfather Clause", at which time, the tax benefits of life insurance policies were being reviewed in Congress for possible tax reform. Claimant asserted that he was later advised that a new tax law (TAMRA) had been passed after his purchase and was retroactive to June 22, 1988, to prevent the use of life insurance as a tax shelter, at which time, this new law placed restrictions on life insurance. Claimant further asserted that Respondent's misleading information and inappropriate recommendation that life insurance policies were the best retirement investment, was incorrect, therefore, Respondent is liable and claimant is requesting that both life insurance policies are null and void and his initial investment be returned.

Respondent, Shearson Lehman Hutton, Inc. by and through their counsel, Kevin J. O'Brien, Esq., of Coolidge Wall Womsey & Lombard, Dayton, Ohio, maintained that Claimant, Edward C. Aselman, Jr. first contacted Mr. Cooper, the Claimant's Financial Consultant with Respondent, to state his two objectives for his life insurance investments were to provide for his son in the event of his death and to obtain an investment vehicle which would provide life insurance benefits, in addition to receiving tax-free distributions from the policy prior to Claimant's death. Respondent further maintained that his first life insurance policy for a single premium of \$10,000.00 was specifically designed to provide for his son and the second policy was set up to satisfy Claimant's other objectives. Respondent contended that Mr. Cooper discussed with the Claimant how much he could comfortably save each month and use that amount to purchase a life insurance through monthly premiums. Respondent further contended that Mr. Cooper explained to Claimant that he could borrow/withdraw money from the life insurance policy up to the cash value and that these borrowings/withdrawals would not be taxed. Respondent asserted that with respect about the new tax law, Technical and Miscellaneous Act of 1988 ("TAMRA"), the only discussions about "grandfathering" existing policies were Mr. Cooper's statements that historically tax bills were not retroactive, thus, the two policies segregating Claimant's investment objectives provided an alternate for Claimant to obtain tax-free withdrawals without triggering TAMRA penalties. Respondent further asserted that the life insurance policies were not represented solely as a retirement investment and were described, represented and explained as life insurance policies, not annuities. Respondent argued that Claimant has waived any claims against Respondent arising from the First Capital Life insurance policies because Claimant requested and received a premium refund which constituted an accord and satisfaction and/or waiver of his claims of the policies, therefore, the claim should be dismissed.

RELIEF REQUESTED

Claimant, Edward C. Aselman, Jr. requested \$6,541.82 in actual damages plus \$2,958.17 punitive damages.

Respondent, Shearson Lehman Hutton, Inc. requested the claim be dismissed with prejudice and costs be assessed against Claimant.

Page Three
AWARD
91-03411

AWARD

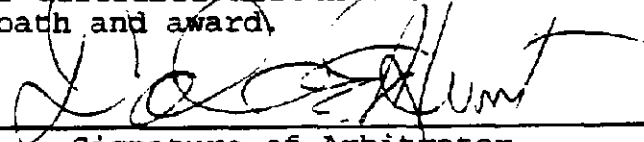
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Dale E. Hunt, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 21, 1991 and by the Respondent on December 20, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant, Edward C. Aselman, Jr. against Respondent, Shearson Lehman Hutton, Inc. are dismissed.
2. The Claimant's request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Edward C. Aselman, Jr. shall be retained by the NASD, Inc.

AFFIRMATION

I, DALE E. HUNT, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: July 13, 1992