

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Aleric D. & Jane C. Rainville

Case No. 91-03807

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
Michael Megeath

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**REPRESENTATION**

Claimants, Aleric D. Rainville Jr. and Jane C. Rainville ("the Rainvilles"): were pro se.

For Respondent: Shearson Lehman Hutton, Inc. ("Shearson") and Michael Megeath ("Megeath"): Cory Hohnbaum, Esq. of Kennedy Covington, et al.

**CASE INFORMATION**

Statement of Claim filed: December 3, 1991. Claimants' Submission Agreement signed: on November 27, 1991.

Respondents' Statement of Answer filed: February 19, 1992. Respondents' Submission Agreement signed: February 18, 1992 by William Hohausser on behalf of Shearson.

Respondent, Megeath, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

**HEARING INFORMATION**

On January 29, 1993, in Charlotte, North Carolina, a hearing lasting two (2) sessions was conducted.

### **CASE SUMMARY**

Claimants alleged that Respondents were liable for making excessive and unsuitable trades in Claimants account after obtaining a Power-Of-Authority. Claimants alleged that Megeath's purchases of small stocks, options, and limited partnerships were very risky and contrary to Claimants investment objectives and that the 260 transactions effected by Megeath over a four year period were far beyond the normal number of transactions for a portfolio of this size.

Respondents denied all allegations of wrongdoing and alleged that: Mr. Rainville's investment objectives included speculation, appreciation with risk, and income with risk; Claimants understood the risks involved; Megeath exercised discretion only rarely and Claimants authorized most of the transactions.

Respondents alleged the affirmative defenses of: ratification; unforeseeable market conditions; and, compliance with all applicable rules and regulations.

### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$46,732.00.

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

### **OTHER ISSUES CONSIDERED & DECIDED**

1. This Panel finds that Respondent, Megeath, was required to sign a Submission Agreement pursuant to Sections 12 and 25 of the NASD Code of Arbitration Procedure, Respondent, Megeath being a person associated with an NASD member firm, Shearson, at the time this controversy arose.

2. 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 Megeath, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$12,500.00.

2. Claimants' request for costs is denied.

3. Respondents' request for attorney's fees and costs is denied.

#### **OTHER COSTS**

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 \$800.00 (two sessions x \$400.00 per session).
2. Respondents, Shearson and Megeath, are hereby assessed \$800.00 jointly and severally, \$400.00 of which shall be paid directly to the Claimants, and \$400.00 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimants.
4. The NASD shall retain the session deposit of \$400.00 paid by Claimants in partial satisfaction of the above fees.

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

#### **Concurring Arbitrators' Signatures**

/s/  
C. Jerome Leonard, Jr., Esq.

Public

/s/  
Louis M. Davis

Industry

/s/  
Edward T. Curry, Jr.

Public

Date of Decision: FEBRUARY 16, 1993