

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eileen Foytho

91-03904

Name of Respondents

Shearson Lehman Hutton, Inc.
Victor Alibrandi
Eric Lehto

REPRESENTATION

For Claimant, Eileen Foytho ("Foytho"): Debra Herman, Esq. of Tew & Garcia-Pedrosa.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Victor Alibrandi ("Alibrandi"): Lonnie Browne Zangrillo, Esq. of Boose Casey Ciklin Lubitz et al.

For Respondent, Eric Lehto ("Lehto"): pro se.

CASE INFORMATION

Statement of Claim filed: December 10, 1991.

Claimant's Submission Agreement signed on: November 26, 1991.

A Joint Statement of Answer of Respondents Shearson and Alibrandi filed: January 30, 1992.

Statement of Answer of Lehto filed: May 20, 1992.

Respondent, Shearson's Submission Agreement and Corporate Acknowledgment signed on: February 21, 1993 by Ann Parry on behalf of Shearson.

Respondent, Alibrandi's Submission Agreement signed on: January 29, 1992.

Respondent, Lehto, did not submit an executed Submission Agreement as required by Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

A hearing lasting three sessions was held on February 24th, 1993 in Fort Lauderdale Florida.

CASE SUMMARY

Claimant alleged that she is a 66 year old retired widow with a retarded child who is and has been on constant medication for emotional distress and deep depression since her husband's death in August of 1987, that she is an unsophisticated investor whose stated investment objectives were safety and preservation of capital and who relied upon the recommendations of Respondents and that Respondents churned her account and engaged in unauthorized, improper and unsuitable options trading in her account. Claimant further alleged that Respondent, Alibrandi, in addition to the unauthorized speculative trading activity in her account, executed an order for \$10,000 of Jiffy Lube Income LP and that although such transactions require the investor's signature, Claimant did not recall signing or authorizing such transaction. Claimant alleged that she was not apprised of the risks of said investment. Claimant stated that Respondents committed numerous securities law violations, committed fraud, deceit, misrepresentation and omission of material fact, breached their fiduciary duty toward her and committed a breach of the implied covenant of good faith and fair dealings. Claimant concluded that, as a result of their actions Claimant lost a significant portion of the funds representing her life savings and support for her retarded child.

Respondents, Shearson and Alibrandi, denied all allegations of wrongdoing and maintained that Claimant inherited the account from her husband after his death and that Claimant told Alibrandi that her investment goals were conservative and that she was primarily interested in income and that Alibrandi explained the covered call writing strategy that Claimant's husband had previously undertaken in detail to Claimant and since it was a low-risk conservative approach to income, Claimant was in favor of continuing that strategy and expressly approved it. Respondents, Shearson and Alibrandi, maintained that Alibrandi understood Claimant's personal circumstances and made every effort to act in accordance with the needs Claimant expressed to him and that each and every transaction entered into in Claimant's account was thoroughly discussed with and approved by Claimant prior to execution. Respondents, Shearson and Alibrandi contended that Claimant's losses were caused by the Stock Market "Crash" which occurred in October of 1987.

Respondent, Lehto, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant was very happy with the covered call writing strategy he employed in her account and that she became quite knowledgeable in it and that all transactions were fully authorized by Claimant. Respondent, Lehto, further maintained that Claimant knew the risks of writing covered calls and felt that they were suitable for her needs.

RELIEF REQUESTED

Claimant requested an award of compensatory damages of \$81,990.00 plus interest of 10% on original principal amount from date of first investment to date of award, post-award interest as allowed by law, costs and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable and just and punitive damages in an amount to be determined by the panel.

Respondents, Shearson and Alibrandi, requested dismissal of the Statement of Claim in its entirety and that the costs of this proceeding be assessed fully against Claimant

OTHER ISSUES CONSIDERED & DECIDED

1. Although Respondent, Lehto, submitted a Statement of Answer, he did not submit an executed Submission Agreement nor did he attend the hearing. Based upon the evidence submitted in Arbitrator's Exhibit No. 1 regarding hearing notices to the parties, this arbitration panel found that proper notice existed as well as jurisdiction pursuant to Section 12(a) of the Code of Arbitration Procedure over Respondent, Lehto. Pursuant to Section 29 of the Code of Arbitration Procedure and based upon evidence in Arbitrator's Exhibit No. 1, this arbitration panel proceeded with the hearing in Lehto's absence.

2. Claimant made a Motion to Strike Lehto's Statement of Answer and the Panel decided to reserve decision for the Award.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson, Alibrandi and Lehto, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's Claim for punitive damages is denied.
3. Claimant's requests for fees and costs are denied.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (three (3) hearing sessions X \$500.00).

1. Claimant is hereby assessed forum fees in the amount of \$500.00 for which the NASD shall retain the \$500.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondents, Shearson, Alibrandi and Lehto, are hereby jointly and severally assessed forum fees in the amount of \$1,000.00 payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$150.00 previously paid by Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Casey W. Mills, Esq.

Public/Chairman

/s/
Carl Hegner

Industry/Panelist

/s/
J. Philip Knight

Public/Panelist

Date of Decision: May 4, 1993