

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Eugene & Florence Hennings

Case No. 91-03992

Name of Respondent(s)

Shearson Lehman Hutton, Inc.

REPRESENTATION

For Claimants, Eugene & Florence Hennings ("Hennings"): Daniel Anker, Esq. of Kohrman, Jackson & Krantz.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"): Bradley J. Schram, Esq. of Hertz, Schram & Saretsky.

CASE INFORMATION

Statement of Claim filed: December 17, 1991. Claimants' Submission Agreement: December 4, 1991.

Respondent's Statement of Answer filed: April 6, 1992. Respondent's Submission Agreement signed on March 3, 1992 by Ann Parry, Esq. of behalf of Shearson.

HEARING INFORMATION

On November 9, 1992 and January 18, 1993, in Tampa, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent was liable for: fraud and misrepresentation; and, breach of fiduciary duty. Claimants alleged that Respondent recommended the purchase of a certain limited partnership and failed to disclose the risks involved in the purchase.

Respondents denied all allegations of wrongdoing and alleged that: Claimants were suitable for the investment; the limited partnership met Claimants investment objectives; Claimants did not

raise any complaints until four years after the purchase; and, Claimants received a prospectus which contained an explanation of the risks involved.

Respondent alleged affirmative defenses including failure to mitigate damages and statute of limitations.

RELIEF REQUESTED

Claimants requested return of the investment principal of \$60,000.00 less any distributions received plus interest of 9% per annum and attorney's fees.

Respondent requested dismissal of the Claim plus costs.

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. Respondent, Shearson, is found liable, and shall pay to the Claimants the amount of \$72,381.00 inclusive of interest.
2. Respondent, Shearson, is also found liable, and shall pay to the Claimants the further amount of \$24,127.00 for attorney's fees. This Panel bases its authority to Award attorney's fees on the Federal Arbitration Act and case law interpreting that Act.
3. Respondent's request for costs is denied.

OTHER COSTS

1. Respondent, Shearson, is also found liable and shall pay to Claimants the further amount of \$4,000.00 as reimbursement towards telecopy, photocopy, library, Federal Express and other miscellaneous costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum

raise any complaints until four years after the purchase; and, Claimants received a prospectus which contained an explanation of the risks involved.

Respondent alleged affirmative defenses including failure to mitigate damages and statute of limitations.

RELIEF REQUESTED

Claimants requested return of the investment principal of \$60,000.00 less any distributions received plus interest of 9% per annum and attorney's fees.

Respondent requested dismissal of the Claim plus costs.

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. Respondent, Shearson, is found liable, and shall pay to the Claimants the amount of \$72,381.00 inclusive of interest.
2. Respondent, Shearson, is also found liable, and shall pay to the Claimants the further amount of \$24,127.00 for attorney's fees. This Panel bases its authority to Award attorney's fees on the Federal Arbitration Act and case law interpreting that Act.
3. Respondent's request for costs is denied.

OTHER COSTS

1. Respondent, Shearson, is also found liable and shall pay to Claimants the further amount of \$4,000.00 as reimbursement towards telecopy, photocopy, library, Federal Express and other miscellaneous costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

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 the \$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/
Herbert L. Blume

Public

/s/
Bruce W. Harting

Public

/s/
Jerrold E. Slutzky

Industry

Date of Decision: April 15, 1993