

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Brandon L. Wilson

vs.

91-04052

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Darwin D. Hostalley
Robert G. Baker
Robert Hennessey
Constance F. Bladon
Frank B. Powers, Jr.

REPRESENTATION

For Claimant: Kalju Nekvasil, Esq., Goodman & Nekvasil, P.A., Safety Harbor, Florida

For Respondents Shearson Lehman Hutton, Inc., Robert G. Baker, Robert Hennessey, Constance F. Bladon and Frank B. Powers, Jr.: Robert V. Williams, Esq., Williams, Reed, Weinstein, Schifino & Mangione, P.A., Tampa, Florida

For Respondent Darwin D. Hostalley: No appearance by Darwin D. Hostalley

CASE INFORMATION

Statement of Claim filed: December 23, 1991

Claimant's Submission Agreement signed on: December 10, 1991

Joint Statement of Answer filed by Respondents on: March 2, 1992

Respondents' Submission Agreements signed as follows:

Shearson Lehman Hutton, Inc.'s: July 23, 1992
Robert G. Baker: April 3, 1992
Robert Hennessey: April 1, 1992
Constance F. Bladon: March 30, 1992
Frank B. Powers, Jr.: March 30, 1992

Respondent Darwin D. Hostalley did not file a Statement of Answer and a Submission Agreement but was duly served and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the Code of Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: July 6, 1992 (one session)
July 8, 1992 (one session)
August 4, 1992 (one session)

Hearing Dates/Sessions: August 5, 1992 (three sessions)
August 6, 1992 (three sessions)
August 7, 1992 (three sessions)

Hearing Location: Tampa, Florida

CASE SUMMARY

Claimant alleged unauthorized transactions, misrepresentations, violation of Federal Securities Laws, violation of Hawaii Securities Act, violation of Hawaii Unfair and Deceptive Trade Practices Act, violation of Florida Securities Act, violation of the Nevada Securities Act, breach of contract, common law fraud, breach of fiduciary duty, negligence and gross negligence, civil theft, violation of Florida RICO Act, and violations of Federal RICO Act, with respect to investments in Government Securities and Mutual Funds.

Respondents denied Claimant's allegations and alleged that Respondents at all times acted in good faith with respect to Claimant and his account.

RELIEF REQUESTED

Claimant requested:

1. Damages exceeding \$56,082.06, as well as the payment of excessive sales commissions;
2. Treble damages;
3. Prejudgment interest;
4. Punitive damages;
5. Attorney's fees; and
6. Costs.

Respondents requested:

1. Dismissal of the Statement of Claim; and
2. That all reasonable costs and attorneys' fees be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Claimant also requested sanctions as outlined in Claimant's Motion for Sanctions alleging that Respondents failed to comply with prehearing discovery.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Robert Hennessey is dismissed from all liability pursuant to Section 16 of the Code of Arbitration Procedure.
2. Respondents Shearson Lehman Hutton, Inc., Darwin D. Hostalley, Robert G. Baker, Constance F. Bladen and Frank B. Powers, Jr. are jointly and severally liable for and shall pay to Claimant the sum of \$35,000.00, inclusive of interest and in satisfaction of Claimant's claims.
3. Claimant's Motion for Sanctions is granted. Therefore, Respondent Shearson Lehman Hutton, Inc. is solely liable for and shall pay to Claimant the sum of \$10,000.00 in sanctions for failure to comply with prehearing discovery. The panel of arbitrators would like to specify that they do not hold Respondents' counsel responsible for such sanction.
4. Claimant's claim for punitive damages is dismissed.
5. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees assessed against:

Respondents, Shearson Lehman Hutton, Inc., Darwin D. Hostalley, Robert G. Baker, Constance F. Bladen and Frank B. Powers, Jr., jointly and severally, in the amount of \$6,900.00, calculated as follows: Nine hearing sessions times \$750.00/session plus three prehearing sessions times \$300.00/session minus the \$750.00 hearing session deposit previously paid by the Claimant.

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

ARBITRATION PANEL


Name

Public/Industry

Brian G. Mooney, Esq.
Louis Saxton
Linda Lovern Oldt

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signature


Brian G. Mooney, Esq.

DATE SERVED: 09/18/92

Louis Saxton

Linda Lovern Oldt

Date of Decision: 8/7/92