

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Willa Sorenson

91-04099

Name of Respondents

Shearson Lehman Hutton, Inc.  
and Thomas Sullivan

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REPRESENTATION

Claimant, Willa Sorenson, was represented by Gail E. Boliver, Esq. of the Boliver Law Firm, Marshalltown, Iowa and John F. Bierman, III, Esq. of Bierman & Bierman, P.C., Grinnell, Iowa.

Respondents, Shearson Lehman Hutton, Inc. and Thomas Sullivan, were represented by Victor A. Machcinski, Esq. of Shearson Lehman Brothers, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on December 30, 1991.

Claimant, Willa Sorenson's, Submission Agreement was signed on December 18, 1991.

Claimant, Willa Sorenson's, Brief For Punitive Damages was filed with the NASD on July 14, 1992.

The Joint Statement of Answer was filed with the NASD by the Respondents, Shearson Lehman Hutton, Inc and Thomas Sullivan, on February 28, 1992.

Respondent, Shearson Lehman Hutton, Inc.'s, Submission Agreement was signed on February 27, 1992 by Victor A. Machcinski, Vice-President of Shearson Lehman Brothers, Inc.

Respondent, Thomas Sullivan's, Submission Agreement was signed on February 24, 1992.

HEARING INFORMATION

The Hearing Dates and Sessions were as follows:

July 30, 1992 for two (2) sessions  
July 31, 1992 for two (2) sessions  
August 1, 1992 for two (2) sessions  
September 4, 1992 for one (1) session  
September 18, 1992 for one (1) session  
September 24, 1992 for two (2) sessions  
September 25, 1992 for two (2) sessions

The Hearing Location was Omaha, Nebraska.

CASE SUMMARY

Claimant, Willa Sorenson, ("Sorenson") alleged that the Respondents, Shearson Lehman Hutton, Inc. now known as Shearson Lehman Brothers, Inc. ("Shearson") and Thomas Sullivan ("Sullivan"), while employed as a registered representative at Shearson, made unsuitable investments in common stock, preferred stock and corporate bonds for the margin account in which Willa Sorenson and her husband, Ray Sorenson, who died on November 29, 1990, were joint tenants. As alleged in the Claim, Ray and Willa Sorenson advised Sullivan on several occasions their desire for a conservative investment strategy and Sullivan was aware that Willa and Ray Sorenson had limited investment information. In addition, Sorenson alleged in 1989 the Sorenson portfolio lost \$10,808.00 in contrast to the Standard and Poor 500 index average increase of .315 and in 1990 the portfolio managed by Sullivan lost \$257,504.00 compared to the Standard and Poor 500 Index average decrease of -.032. Sorenson further alleged that Sullivan made numerous investments to generate commissions and not for the improvement of the Sorenson's portfolio. Sorenson made the following specific allegations, including, but, not limited to, churning, price manipulation, improper use of the margin account, improper supervision, breach of fiduciary duty and misrepresentation and omissions. Based on the above allegations, Sorenson asserted claims for violation of Section 10(b) of the Securities Exchange Act of 1934 and violations under Chapter 502 of the Iowa Uniform Securities Act.

Shearson and Sullivan denied all the allegations of wrongful conduct and liability to the Claimant for damages and alleged that all the transactions in the account were suitable for Sorenson based on all of the information supplied by the Sorensens to the Respondents. Shearson and Sullivan further alleged that all strategies and transactions in the account were authorized and controlled by Ray Sorenson, acting on behalf of the joint tenants, and that Ray Sorenson was knowledgeable, well-informed and was provided information by the Respondents concerning the investments. According to the Respondents, the losses in the account were the result of market action in the securities for which Shearson and Sullivan are not responsible. In addition, the Respondents alleged that the Sorenson did not have an investment objective of purchasing according to the Standard & Poor 500 Index.

In addition, the Respondents asserted the following affirmative defenses:

1. The Statement of Claim fails to state any cause of action against the Respondents upon which relief may be granted.
2. Claimant's allegations of fraud are wholly conclusory and failed to set forth the allegedly fraudulent conduct with the specificity required by law.
3. Claimant, as the joint tenant of an account controlled by her husband, is an experienced investor and, at all relevant times, had or should have had full knowledge of all the material facts concerning the investments jointly made, including the nature of the investments as well as the associated risks. To the extent any loss or diminution was the result of unforeseen market fluctuations and was within the risk that the Claimant assumed.
4. The damages allegedly suffered by the Claimant have no causal relationship with any act committed by or legally attributable to the Respondents.
5. Sorenson's Claims are barred because, to the extent representations were made regarding investments, they were merely expressions of opinion, not fact, and as such are not actionable.
6. Claimant, through her husband, directed and/or authorized the purchase or all investments for their joint account. In addition, immediately after purchases were made, Sorenson received transactional confirmations and monthly statements advising her to contact the branch immediately if she had any objections to the investment. She did not contact the branch. Accordingly, the claims are barred by the principals of waiver, estoppel and ratification.
7. The damages, if any, alleged to have been sustained by Sorenson were caused, in whole or in part, by the Claimant's failure to mitigate her damages.
8. Sorenson's claims, in whole or in part, are time-barred.
9. Claimant's request for punitive damages violates the Due Process Clause of the United States Constitution, as well as applicable provisions of the New York State Constitution and New York law, which precludes an arbitrator from awarding punitive damages.

**RELIEF REQUESTED**

Sorenson requested an entry of an award against Shearson and Sullivan for the minimum amount of \$286,051.00 in compensatory damages, punitive damages in the amount of \$500,000.00, or such other amount as the panel deems just, interest, costs of the arbitration, attorneys fees and other remedies as provided by law.

Shearson and Sullivan requested that the Statement of Claim be dismissed and an award against Sorenson for fees and expenses including attorneys' fees and costs of the arbitration.

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

1. Respondents, Shearson Lehman Brothers, Inc. and Thomas Sullivan, are jointly and severally liable for and shall pay to the Claimant, Willa Sorenson, the sum of \$456,000.00. This amount of compensatory damages awarded by the panel to Claimant by the panel conforms to the proofs presented by Claimant at the hearing;
2. Sorenson's claim for punitive damages is hereby dismissed and denied in its entirety; and
3. The parties shall each pay their own costs of the arbitration except for the Forum Fees which are addressed below.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The National Association of Securities Dealers, Inc. shall retain the nonrefundable claim filing fee of \$200.00 and the hearing session deposit of \$750.00 previously deposited with the NASD by Sorenson. Additional Forum Fees in the sum of \$11,250.00 are assessed to Shearson and Sullivan jointly and severally. In addition, Shearson and Sullivan are jointly and severally liable for and shall directly reimburse Sorenson for the amounts of the deposits which were retained by the NASD. This sum comes to a total of \$950.00.

Forum Fees were assessed on the basis of \$1,000.00 per hearing session for twelve (12) hearing sessions. Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name	Date of Signature
<u>/S/ Samuel Van Pelt</u> Samuel Van Pelt Chairperson/Public Arbitrator	<u>November 30, 1992</u>
<u>/S/ Bruce E. Haney</u> Bruce E. Haney Panelist/Industry Arbitrator	<u>November 30, 1992</u>
<u>/S/ Thomas J. Tarsney</u> Thomas J. Tarsney, Esq. Panelist/Public Arbitrator	<u>December 1, 1992</u>

Date Award Served by the NASD: December 7, 1992