

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Miriam Pearl

92-00029

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Barry Yeckes

REPRESENTATION

For Claimant, Miriam Pearl ("Pearl"): Bruce A. Katzen, Esq. of Klugh, Peretz, Kaplan and Berlin P.A., Boca Raton, Florida.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Barry Yeckes ("Yeckes"): Ronald D. Shindler, Esq. of Fowler White Burnett Hurley Banick et al., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: January 1, 1992.

Claimant's Submission Agreement signed: December 19, 1991.

Statement of Answer filed by Respondents, Shearson and Yeckes: May 11, 1992.

Respondent, Yeckes, Submission Agreement signed: May 11, 1992.

Respondent, Shearson, Submission Agreement signed: April 1, 1992 by Rick Apicella, Vice President.

HEARING INFORMATION

On February 24, 1993, in Ft. Lauderdale, Florida, a pre-hearing conference lasting one session was conducted in-person with an arbitrator.

On February 1, 2, 3, and 7, 1994, March 14, 15, 16 and 17, 1994, and June 23, 24, 28, 29, and 30, 1994, in Ft. Lauderdale, Florida, hearings lasting 26 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were responsible for losses suffered in the account which was open from 1985 through 1990; that the losses were a result of Respondents' unsuitable recommendations, churning and misrepresentations; and that Respondents' acts constitute negligence, fraud, breach of fiduciary duty, and violations of Florida and Federal securities laws.

Respondents denied all allegations of wrongdoing and alleged that Claimant was a knowledgeable investor in securities, real estate and commodities; that Claimant and her husband did not place their entire life savings with Respondents for investment; and that Claimant did not totally rely upon the recommendations of Respondents. It was further alleged that Claimant's investment objective was not safety and income, but instead was a minimum return of 15 to 20 percent per annum, whether through aggressive income investments or through trading; that Claimant knowingly assumed the risk in order to achieve her investment objectives; and that the account was not churned in light of Claimant's investment objectives and the fact that Respondents did not control Claimant's account. Finally, Respondents alleged that the claim was barred by applicable statute of limitations; that Claimant was aware of and assumed the risks associated with investing; that Claimants did not reasonably rely on any asserted misrepresentations or omissions by Respondents; that any losses sustained were caused by Claimant's own negligence; that Claimant ratified and affirmed all transactions in the account and that the claim failed to state a claim upon which relief could be granted.

RELIEF REQUESTED

Claimant requested: compensatory damages in excess of \$300,000.00; punitive damages in the amount three times the amount of compensatory damages; pre-judgment interest; costs and attorney's fees and such other relief as the arbitration panel deems just and proper.

Respondents requested that the claim be dismissed and that they be awarded their costs and expenses, including attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. During the course of the hearings, Claimant orally withdrew her allegation of unauthorized trades and purchasing on margin without authorization and

Respondents withdrew their request for attorney's fees.

2. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains 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 and Yeckes are found liable, jointly and severally, and shall pay to the Claimant the amount of \$25,000.00, inclusive of costs and interest.
2. Claimant's requests for punitive damages and attorney's fees are denied.
3. Respondents' request for costs is denied.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$26,300.00 (1 pre-hearing conference x \$300.00 plus 26 sessions x \$1,000.00).

1. Claimant is hereby assessed \$13,150.00 for which the NASD shall retain the \$10,650.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$2,500.00.
2. Respondents, Shearson and Yeckes, are hereby assessed \$13,150.00, jointly and severally, payable to the National Association of Securities Dealers Inc.
3. The NASD shall retain the \$250.00 non-refundable filing fee paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

15/
Steven Goerke, Esq.

Public

15/
Sterling F. Treymane

Public

15/
David P. Wardwell

Industry

Date of Decision:

7/26/94