

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Murray & Muriel Berns (Deceased)

Case No. 92-00035

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Kevin M. Peters

REPRESENTATION

For Claimants, Murray Berns and Muriel Berns ("the Berns"): Stephen R. Ponder, Esq. of Kinsey Vincent Pyle.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") and Kevin M. Peters ("Peters"): Harry T. Walters, Esq. of Shearson Lehman Brothers, Inc.

CASE INFORMATION

Statement of Claim filed: January 3, 1992. Claimants' Submission Agreement signed: December 27, 1993.

Respondents Statement of Answer filed: March 9, 1992. Respondents' Submission Agreements signed: April 23, 1992 by Harry T. Walters on behalf of Shearson, and on May 4, 1992 by Peters.

HEARING INFORMATION

On May 18, 19, 20 and 21, 1993, in Tampa, Florida, hearings lasting ten (10) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents breached their legal and fiduciary obligations to Claimants and that Respondents engaged in deceptive, fraudulent, and illegal activities with respect to the handling of Claimants' investments; alleged activities included: excessive trading to generate

commissions for Respondents; failing to provide Claimants with required notices when large commissions were paid; failure to have Claimants sign the appropriate margin risk acknowledgement and option papers before trading in options; making investments inconsistent with the needs of Claimants; and, forging Claimants signature on client agreements.

Respondents denied all allegations or wrongdoing and alleged that: Claimant, Murry Berns, was extremely sophisticated in the trading of securities; was involved in trade decisions regarding his investments; Claimants authorized the options trading in his accounts, and there was no forgery.

Respondents alleged the affirmative defenses of failure to state a cause of action; statute of limitations; lack of reliance by Claimants; failure to mitigate damages; no fiduciary relationship between Claimants and Respondents; ratification; investments were appropriate; lack of scienter; lack of control; and, collateral estoppel.

RELIEF REQUESTED

Claimants requested \$402,000, plus attorney's fees, costs, interest, and punitive damages.

Respondents 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

1. 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:
2. Respondents, Shearson and Peters, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorney's fees, costs, and punitive damages is denied.

OTHER COSTS

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

FORUM FEES

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

forum fees in the amount of \$10,000 (ten sessions x (1,000 per session)).

2. Claimants are hereby assessed \$5,000 for which the NASD shall retain the \$1,000 previously deposited in partial satisfaction thereof leaving a balance due of \$4,000 payable to the National Association of Securities dealers, Inc.

3. Respondent, Shearson, is hereby assessed \$5,000 payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$250 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/
Constance J. McCaughey, Esq.

Public

/s/
Richard J. Jones, III, Esq.

Public

/s/
Gerald B. Conley

Industry

Date of Decision: June 16, 1993