

**PUBLIC**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between :

Colden C. Boyle, D.V.M. :

Claimant :

vs. :

Shearson Lehman Hutton, Inc. :  
Michael K. Rupp :

Respondents :

CASE #92-00183  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 20, 1992, Claimant, Colden C. Boyle, DVM, who appeared Pro Se, alleged that in June 1989 he opened a Money Market account with Respondent, Michael K. Rupp, Financial Consultant with Respondent, Shearson Lehman Hutton, Inc. and Respondent, Michael K. Rupp wrote up a Shearson Managed Asset Report at no charge. Claimant further alleged that in February 1990 he advised Respondent, Michael K. Rupp that he was interested in no load or no front end load funds and Claimant specifically advised Respondent, Michael K. Rupp he did not want to pay a 3-5% load off the top of his investment capital, at which time, Respondent, Michael K. Rupp recommended the purchase of Alliance New Europe Fund ("ANE"), a closed end mutual fund. Claimant contended that Respondents, Shearson Lehman Hutton, Inc. and Michael K. Rupp provided him with a prospectus of ANE and Respondent, Michael K. Rupp informed Claimant that he could purchase this new offering at no commission for \$12.00 per share with very nominal start up charges, therefore, Claimant would be receiving almost 100% of his investment working for him. Claimant further contended that on or about March 29th or 30th, 1990 he contacted Respondent, Michael K. Rupp to place an order over the phone for 3,000 shares of ANE for \$12.00 per share and since Respondent, Michael J. Rupp was out of town, the order was taken by another person, at which time, Claimant inquired if there were any changes in the prospectus and was advised that there had been none. Claimant asserted that approximately three weeks after the purchase he received another ANE prospectus that showed commissions and other charges were subtracted with a load of 7%, which was in excess of any parameters that Claimant had discussed with Respondent, Michael K. Rupp. Claimant further asserted that when

the stock was down to \$10.00 per share, he contacted a discount brokerage firm and attempted to minimize his loss by averaging the purchase with the more expensive \$12.00. Claimant argued that he was misled per the fees of the original purchase and Respondents led him to believe fees would occur but only be a few cents per share not 7¢ per share. Claimant further argued that Respondents, Shearson Lehman Hutton, Inc. and Michael K. Rupp failed to disclose all the relevant facts about the ANE investment whereby Claimant would not have invested in this type of investment knowing it could be converted into an open end fund.

Respondents, Shearson Lehman Hutton, Inc. and Michael K. Rupp by and through their in-house counsel, Ann Parry, Esq., maintained that on or about June 1989 Claimant, Colden C. Boyle opened an account at Respondent, Shearson Lehman Hutton, Inc. with Respondent, Michael K. Rupp as his Financial Consultant, at which time, Respondent, Michael K. Rupp discussed with Claimant his investment background and objectives. Respondents further maintained that no trading activity occurred in Claimant's account until March, 1990, when Respondent, Michael K. Rupp telephoned Claimant to suggest that Claimant invest in an upcoming initial public offering of shares in the Alliance New Europe Fund, Inc., a closed-end management investment company, at which time, Respondent, Michael K. Rupp sent Claimant a copy of the preliminary prospectus for ANE. Respondents contended that both the preliminary prospectus and the final prospectus disclosed that ANE could be converted to an open-end investment company. Respondents further contended that on March 26, 1990, the effective date of the ANE offering, Claimant telephoned Respondent, Shearson Lehman Hutton, Inc. to place an order of 3,000 shares of ANE at the purchase price of \$12.00 per share. Respondents asserted that in June 1990, Claimant requested that his ANE shares be transferred out of his account and mailed to him. Respondents further asserted that the underwriting discounts and commissions are included in the public offering price of ANE, in addition to the fact that ANE could be converted to an open end fund, which all such information was clearly disclosed in the preliminary prospectus. Respondents further argued that Claimant's allegations are undercut by the fact that he continued to purchase ANE through an account at another brokerage firm after his initial purchase with Respondent, Shearson Lehman Hutton, Inc., therefore, Respondents are not liable for any losses Claimant may have incurred through his own investment decisions.

#### RELIEF REQUESTED

Claimant, Colden C. Boyle, DVM requested \$8,047.00 in actual damages.



Respondents, Shearson Lehman Hutton, Inc. and Michael K. Rupp requested the claim be dismissed and the costs and expenses incurred in this proceeding be awarded to them.

#### AWARD

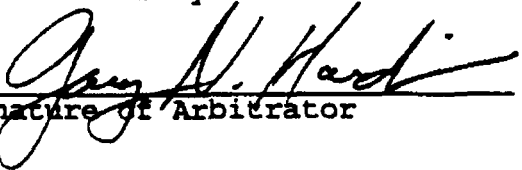
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gary N. Hardiman, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 8, 1992, by the Respondent, Michael K. Rupp on February 27, 1992 and not by Respondent, Shearson Lehman Hutton, Inc. as required Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant, Colden C. Boyle, DVM against Respondents, Shearson Lehman Hutton, Inc. and Michael K. Rupp are dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Colden C. Boyle, DVM shall be retained by the NASD, Inc. Respondents, Shearson-Lehman Hutton, Inc. and Michael K. Rupp are liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

#### AFFIRMATION

I, GARY N. HARDIMAN, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: August 11, 1992