

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas M. Kelty

and

92-00431

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

Claimant was represented by Joanna Kelty of Grand Rapids, Michigan.

Respondent was represented by Steve J. Weiss, Esq. and Karen A. Gould, Esq. of Harts, Schram & Saratsky, Bloomfield Hills, Michigan.

CASE INFORMATIONThe Statement of Claim was filed on or about February 4, 1992.
Claimant's Submission Agreement signed on January 24, 1992.

Statement of Answer filed by Respondent, Shearson Lehman Brothers, Inc. on or about May 1, 1992.

HEARING INFORMATION

The hearing was held on Tuesday, September 22, 1992 in Southfield, Michigan for a total of one (1) session.

CASE SUMMARY

Claimant alleged that Respondent through its employee, Norman Polderdyk made material misrepresentations to induce him to purchase certain securities and that the investments were unsuitable for him in light of his stated investment objectives. Claimant specifically alleged that Mr. Polderdyk strongly recommended the purchase of TWA, Inc. senior notes without providing a prospectus, providing information regarding the risks involved, informing him of the notes' rating or that the securities were the result of a highly leveraged buy out. Claimant further alleged that this security was purchased on margin on the recommendation of Mr. Polderdyk. Claimant also alleged that Mr. Polderdyk strongly recommended the purchase of Adelpia Communications senior notes without providing a prospectus, providing information regarding the risks involved, informing him

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of the notes' rating. Claimant alleged that the purchase of Equitable Real Estate Limited Partnership was unsuitable for him. Claimant further alleged that his purchase of American Income Partners was made as a result of misrepresentations or omissions of material facts by Mr. Polderdyk. Claimant specifically alleged that he was quoted prices far above the current market prices for this security and was not advised of the secondary market firms which specialize in the resale of limited partnership interests.

Respondent denied the allegations set forth in the Statement of Claim and stated that the Claimant was an experienced investor and that the recommended investments were proper and suitable for him. Respondent further stated that Claimant has not mentioned a number of investments which resulted in profit for the Claimant. Respondent also asserted the following affirmative defenses: Claimant has failed to state a claim on which relief can be granted, the claims are barred by the applicable statutes of limitations, the statutes of frauds, failure to mitigate, laches, waiver, estoppel, ratification, contributory negligence, and assumption of the risk.

RELIEF REQUESTED

Claimant requested an award in the amount of approximately \$21,000.00.

Respondent requested that the claim be dismissed and that it be awarded its costs, expenses and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Shearson Lehman Brothers, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared at and presented testimony at the hearing is bound by the determination of the arbitrator on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered and to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted herein shall be and hereby are

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dismissed in their entirety.

2. Each party shall bear their own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant. Respondent shall pay to the NASD the sum of \$300.00 pursuant to Section 33 of the NASD Code of Arbitration Procedure.

Forum fees are calculated at the rate of \$300.00 per hearing session. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

September 29, 1992


Norman Bristol, Esq.
Presiding Chair
Public Arbitrator