
In the Matter of the Arbitration BetweenName of Claimant

Estate of Myrle S. Kahn

92-00492

Name of RespondentsShearson Lehman Brothers, Inc.
Wayne Hutton
Charles Harold Cooper

REPRESENTATION

For Claimant: Carole G. Gelfeld, Esq. and Elizabeth S. York, Esq.

For Respondents: Charles R. Mills, Esq. and Michael W. Solinsky, Esq. of
the law firm of Lord Day & Lord, Barrett Smith.CASE INFORMATION

Statement of Claim filed on February 7, 1992.

Claimant Estate of Myrle S. Kahn's Submission Agreement signed by Personal
Representative David F. Kahn on February 4, 1992.

Statement of Answer filed by Respondents on April 23, 1992.

Respondent Shearson Lehman Brothers Inc.'s Submission Agreement signed on
May 22, 1992.

Respondent Charles Cooper's Submission Agreement signed on May 28, 1992.

Respondent H. Wayne Hutton's Submission Agreement signed on May 28, 1992.

HEARING INFORMATION

Pre-Hearing Conference: July 20, 1992, 1 Session.

Hearing Dates/Sessions: August 4, 1992, 2 Sessions.
August 5, 1992, 2 Sessions.Hearing Location: National Association of Securities Dealers, Inc. offices
located in Washington, DC.

CASE SUMMARY

Claimant alleged that Mrs. Kahn was an unsophisticated investor who relied exclusively on the advice of Respondents in making investment decisions. Claimant further alleged that respondents induced her to sell a government securities mutual fund and to purchase interests in two highly illiquid, long-term limited partnerships whose underlying values and financial performance were not readily available to the investors. Claimant further alleged that these limited partnerships were unsuitable in light of her investment objectives, conservative investment history, advanced age and financial condition. Claimant further alleged that in presenting the investments to Mrs. Kahn, Respondents intentionally or negligently made untrue statements or misrepresented or omitted material facts regarding the limited partnerships to induce Mrs. Kahn to purchase the limited partnerships. Claimant further alleged that to finance the purchase of the limited partnerships, Respondents induced Mrs. Kahn to sell government securities mutual funds, which they had sold her one year earlier, which caused her to incur a deferred sales charge for redeeming shares within 5 years of purchase. Claimant further alleged that Respondents breached their fiduciary duty to Mrs. Kahn when they recommended the purchase of the limited partnerships and sale of the government securities mutual funds. Claimant further alleged that Respondents induced Mrs. Kahn to open a Shearson Equity Management Account, a long term speculative stock account, which was unsuitable given Claimant's investment objectives, age of 73 years and ill health. Claimant further alleged that Shearson failed to reasonably supervise Respondents Cooper and Hutton in connection with the purchase of limited partnerships in Mrs. Kahn's account. Claimant further alleged that Respondents' actions violated Securities Exchange Act of 1934, 15 U.S.C. Sec. 78(j), 17 CFR Sec. 240.10b-5; the Maryland Securities Act, Corporations and Associations Article, Title 11, Sec. 301; Article I, Sections 2, 18 & 27 of the NASD Rules of Fair Practice; Rules 405 & 723 of the New York Stock Exchange and the equitable, common law prohibitions against fraud and negligent misrepresentation.

Respondents maintained that Mrs. Kahn discussed and authorized every transaction in her account and that at no time did she raise any complaint or objection about any transaction in her account or security purchased by her. Respondents further maintained that there was never any expression by Mrs. Kahn or reason for Respondents to believe that her securities portfolio did not meet her needs and objectives. Respondents maintained that Cooper discussed the risks and illiquidity of the limited partnerships with Mrs. Kahn before she decided to purchase them and that Mrs. Kahn was advised that if she liquidated shares of her government securities mutual funds she would incur a deferred sales charge. Respondents further maintained as defenses that Claimant's claims of fraud and negligent misrepresentation had no basis in fact or law; no actual damages were incurred; Claimant's claims were barred by principles of ratification, waiver and estoppel; the Statement of

Claim was barred by the statute of limitations; and, Shearson and Respondent Hutton conducted proper supervision. Respondents further maintained as defenses that Claimant failed to state a cause of action upon which relief could be granted; the claims were barred by laches, there was no causal relationship between claimant's alleged damages and any acts attributable to Respondents; arbitrators have no authority to award punitive damages under New York law; and any alleged damages for alleged excessive trading are limited to commissions charged on the transactions involved.

RELIEF REQUESTED

Claimant requested judgment against Shearson, Hutton and Cooper jointly and severally as follows:

1. Rescission of the purchases of 100 units, Insured Income Properties 1988, L.P., in the amount of \$100,000 and 25 units, Participating Income Properties II, L.P., in the amount of \$25,000 and return of such purchase monies to the Estate of Myrle S. Kahn; or in the alternative, sale of the two said limited partnerships with payment to the said Estate of Myrle S. Kahn of the sale proceeds and additional monies in the amount of the difference between the sale proceeds and the sum of \$125,000.
2. Actual damages in the amount of \$4,750 for all commissions and charges generated on the sale of Mrs. Kahn's HIS Government Securities Series and her SLE Portfolio Government Securities investment to fund the purchase of the two limited partnerships.
3. Punitive damages of \$5,000,000.
4. All costs, expenses and disbursements, including reasonable attorneys' fees, incurred by the Claimant in pursuing these arbitration claims.
5. Such other relief as the arbitration panel deems just and proper.

Respondents requested that Claimant's Statement of Claim be denied and dismissed in all respects and that Respondents be awarded their costs and expenses incurred in the proceeding.

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. The demand for rescission of purchase of 100 depositary units, Insured Income Properties, L.P. is denied. The demand for rescission of purchase of 25 depositary units, Participating Income Properties II, L.P. is denied.
2. The claim against Wayne Hutton is dismissed.
3. The Respondent Charles Harold Cooper shall pay to the Claimant the sum of Twelve Thousand Dollars and No Cents (\$12,000.00), interest specifically excluded as the arbitration panel determined that the investments were unsuitable and generated excessive commissions and fees as compared to other income-producing real estate investment vehicles available at that time.
4. The Respondent Shearson Lehman Bros., Inc. shall pay to the Claimant the sum of Three Thousand Four Hundred Dollars and No Cents (\$3,400.00), interest specifically excluded for their failure to properly supervise Claimant's account.
5. The Claimant's request for punitive damages is denied.
6. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

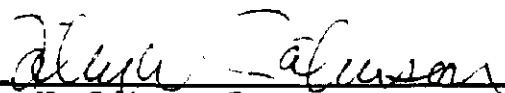
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.


4 sessions X \$1,500.00 = \$6,000.00 plus pre-hearing conference fee of \$300.00
= \$6,300.00 minus hearing session deposit of 1,500.00 = \$4,800.00 due.

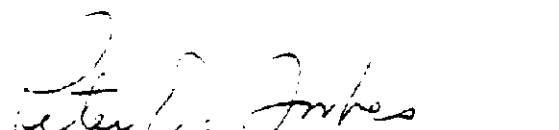
Respondent Shearson be and hereby is liable and shall pay to the NASD the sum of \$4,800.00 to represent forum fees, and shall pay Claimant the sum of \$1,800.00 to reimburse Claimant for Claimant's filing fee and hearing session deposit paid.

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

ARBITRATOR SIGNATURES


John W. Johnson, Esq.
Public Arbitrator


Janet Stern Solomon, Esq. D.B.+
Public Arbitrator


Peter D. Forbes
Industry Arbitrator

Date of Decision: September 11, 1992