

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Raymond D. Sunday and
Ethel V. Sunday

and

92-00607

Name of Respondent

Shearson Lehman Brothers, Inc.

REPRESENTATION OF PARTIES

Claimants Raymond D. Sunday and Ethel V. Sunday appeared pro se.

Respondent Shearson Lehman Brothers, Inc. was represented by Bradley W. Foster, Esq. and C.W. Flynn, Esq. of Locke Purnell Rain Harrell, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about February 19, 1992. Claimants' Submission Agreement was signed on February 11, 1992.

Statement of Answer was filed by Respondent Shearson Lehman Brothers, Inc. on or about April 24, 1992. Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement was signed on March 20, 1992 by Bari Jane Wolfe.

HEARING INFORMATION

The hearing was held on Thursday, December 3, 1992 in Dallas, Texas for a total of one (1) session.

CASE SUMMARY

Claimants alleged that when they opened their account at E.F. Hutton and Company, Inc. in October, 1985, they advised the broker that they had recently retired and stressed that safety of principal was paramount. The claimants also stated that a succession of brokers at E.F. Hutton and Company, Inc. and its successors made unsuitable recommendations in light of their stated objectives and financial background. The claimants invested in Criterion Fund; Guaranteed Hotel Investors and Hutton Variable Investment Program.

Respondent stated that the risks of each of the investments made by

the Claimants was fully discussed with the claimants prior to their investment. Respondent further stated that the trades in question were made at the requests of claimants to change the investments. Respondent also asserted the following affirmative defenses: the claims asserted are untimely and barred by applicable statutes of limitation, the claims are barred by the doctrines of waiver, estoppel and ratification, the claimants failed to mitigate their damages, and the claims are barred by their own comparative fault.

RELIEF REQUESTED

Claimants requested an award of \$75,000.00 in compensatory damages and \$25,000.00 in punitive damages.

Respondent requested that the claims be denied in their entirety.

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 original(s) remain on file 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. The claims asserted herein shall be and hereby are dismissed in their entirety. In dismissing the claims the panel finds that the claims were barred by the applicable statutes of limitation. The panel further finds that in the event the claims were not barred by the statutes of limitation, the claims would be dismissed on the merits.
2. Each party shall bear its 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 \$150.00 and shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant.

Award 92-00607

Page 3 of 3

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any.

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

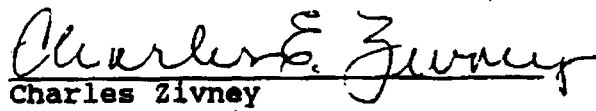

Barbara D. Campanelli, Esq.
Presiding Chair
Public Arbitrator

Dated:

12-3-92


George C. Witte
Public Arbitrator

12/3/92


Charles Zivney
Industry Arbitrator

12/3/92