

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Richard M. Lewis :

Claimant :

vs. :

Edward D. Jones & Co. :

Respondent :

CASE #92-00725
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 28, 1992, Claimant, Richard M. Lewis, who appeared Pro Se, alleged that Respondent, Edward D. Jones & Co. violated Article III, Section 18, of the NASD Rules of Fair Practice when they misrepresented the true quality, safety and liquidity of the \$9,000.00 face value of the United Bankers, Inc. 12 1/4% Debentures due June 15, 1993, which Claimant purchased on November 19, 1985. Claimant further alleged that as an experienced investor with a diversified portfolio, the United Bankers, Inc. purchase was suitable for his account and he relied on Respondent's; as a market maker, evaluation bids to make the decision to purchase this security. Claimant contended that Respondent was aware of the declining financial situation of United Bankers, Inc. from their original offering of common shares to the filing of United Bankers, Inc. Chapter 7, Bankruptcy in March, 1990 and withheld this information at all relevant times. Claimant further contended that in March 1989 Respondent provided evaluation bids of 95 on the United Bankers, Inc. security and this bid justified a continued holding of that security and at no time, did Respondent indicate that United Bankers, Inc. was under such financial stress that within a six month period they would discontinue payment of interest. Claimant asserted that he received the September 15, 1988 interest payment but that United Bankers, Inc. was unable to make the December 15, 1988 interest payment or payment of interest after that date through their Bankruptcy filing. Claimant further asserted that in October, 1988 Respondent discontinued offering quotes and in June, 1989 United Bankers, Inc. made a non-mandatory exchange offer of his holdings, at which time, Respondent exchanged Claimant's holdings without his verbal or written authorization, which violated the Rules of Fair Practice. Claimant argued that Respondent provided false and Page

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misleading information through their bid process and by not sharing important information concerning this holding, Claimant was unable to take action to mitigate his losses.

Respondent, Edward D. Jones & Co., Inc. by and through their in-house counsel, Cynthia A. Doria, Esq., maintained that Claimant, Richard M. Lewis' case is founded upon his purchase of 12 1/4 United Bankers, Inc. debentures due June 15, 1993 purchased on November 19, 1985, therefore, they move for dismissal of the complaint pursuant to Section 16 of the NASD Code of Arbitration Procedure, (the "Code") and assert that the matters at issue are clearly barred by the passage of the time limitations set forth under Section 15 of the Code. Respondent further maintained that although the claims should be time-barred, at the time of the sale, United Bankers, Inc. was a well-regarded company in the financial community and was then quite profitable and well-capitalized thus; clearly a suitable recommendation. Respondent contended that during the complained of periods, they simply listed themselves as a market maker in the bonds and basically bought and sold them at prices ranging between 95%-102% of their par value during this period. Respondent further contended that during this same time, United Bankers, Inc. appeared healthy and there was nothing emanating from the company to indicate the bonds were in trouble until mid-February 1988 as increasingly negative news about United Bankers, Inc. was made public. Respondent asserted that in June 1988 the bonds could still have been sold pursuant to a workout bid of 85% of their face value but Claimant failed to mitigate his losses. Respondent further asserted that in 1989 United Bankers, Inc. offered an exchange of its 12 1/4% debentures due 1993 for 8% Senior Secured Subordinated Debentures due 2003 and Respondent had nothing to do with the structure of the exchange offer nor did they solicit the exchange. Respondent argued that they regret the loss Claimant has suffered but they acted ethically and responsibly in full compliance with the NASD Rules of Fair Practice and have no liability to Claimant.

RELIEF REQUESTED

Claimant, Richard M. Lewis requested \$10,000.00 in actual damages.

Respondent, Edward D. Jones & Co. requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single

Public Arbitrator, H. Victor Schwimmer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 21, 1992 and by the Respondent on March 18, 1992.

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 claim of Claimant, Richard M. Lewis against Respondent, Edward D. Jones & Co. is dismissed in its entirety.
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, Richard M. Lewis shall be retained by the NASD, Inc.

AFFIRMATION

I, H. VICTOR SCHWIMMER, ESQ., 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.



Signature of Arbitrator

DATE OF DECISION: June 16, 1992