

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
 :
William H. & Mary Lou Wilkinson :
 :
 : Claimants :
 : CASE #92-01138
vs. : AWARD
 :
Shearson Lehman Brothers, Inc. :
 :
 : Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 1, 1992, Claimants William H. & Mary Lou Wilkinson, who appeared Pro Se, alleged that in 1986 Respondent Shearson Lehman Brothers, Inc. by and through their Account Executive, Edward L. Egler contacted them to recommend the sale of their \$6,000.00 Mountain States Power bonds and subsequent purchase of \$10,000.00 Guaranteed Hotel Investors 1985 by guaranteeing a higher rate of return and withholding its potential risk. Claimants further alleged that prior to this recommendation, they advised Respondent that their investment objectives were for income and safety. Claimants contended that on May 20, 1986 they received a letter from the Franchise Finance Corporation of America ("FFCA") acknowledging their investment in Guaranteed Hotel Investors 1985. Claimant further contended that as the years went by they received their quarterly distribution checks and thought nothing more about the matter. Claimants asserted that in mid-1991 they were advised by FFCA that their investment was in trouble and their quarterly distributions were likely to be reduced, at which time, on November 12, 1991, they wrote to Respondent to complain about how they were deceived into this investment. Claimants further asserted that on January 10, 1992 FFCA informed them of the reduction of their quarterly distributions and subsequently, on January 31, 1992 Respondent responded to Claimants' November 12, 1991 letter by stating that "by executing the subscription agreement, you acknowledged the suitability of the limited partnership". Claimants argued that when they reviewed all the documentation Respondent sent, they discovered that Claimant, Mary Lou Wilkinson's signature on the subscription agreement had been forged, in addition to the fact that the information of their income and net worth eligibility on this form was incorrect, attesting that Claimant, Mary Lou Wilkinson would not have signed

this form. Claimants further argued that Respondent should rescind the investment due to their misrepresentation of the risks of the investment; lack of suitability due to non-qualifying income and net worth, in addition to the forged signature whereby Respondent should return Claimants \$10,000.00 initial investment.

Claimants filed a Motion to Bar any late Answer which may be filed by Respondent, pursuant to Section 25 of the NASD Code of Arbitration Procedure.

Respondent Shearson Lehman Brothers, Inc. by and through counsel James K. Langdon II of Dorsey & Whitney, Minneapolis, Minnesota, maintained that in February 1985 Claimants William H. & Mary Lou Wilkinson opened an account with E.F. Hutton Company after speaking with Mr. Egler, a registered representative then employed by Hutton, at which time, Claimants purchased approximately \$5,000.00 worth of a government bond fund at the recommendation of Mr. Egler. Respondent further maintained that in March 1986, Mr. Egler contacted Claimants to discuss the potential investment in Guaranteed Hotel Investors ("GHI"), whereby, Mr. Egler advised Claimants that although GHI was an attractive, conservative long-term investment he nonetheless was careful to describe the risks involved. Respondent contended that at no time did Mr. Egler make any guarantees of profitability, withhold any information regarding GHI, or otherwise misrepresent the nature of the investment. Respondent further contended that prior to Claimants' investment Mr. Egler provided them with a prospectus and certain other sales material detailing the nature of the investment. Respondent asserted that on April 4, 1986 Claimants signed a Subscription Agreement whereby they agreed to purchase 200 units of GHI at \$500.00 per unit, for a total price of \$10,000.00 and confirmed to Respondent that they met all applicable suitability requirements. Respondent further asserted that for the next five years Claimants received the promised stream of income from this investment and by late 1990 the hotel industry underwent a series of setbacks, at which time, GHI suffered accordingly whereby the distributions in 1991 were 7.8% but are expected to be less for 1992. Respondent argued that they acted in the utmost good faith in handling Claimants' account and the fact that GHI has recently performed at a lower than anticipated level does not establish that Respondent was fraudulent or reckless in recommending it as a suitable investment.

Respondent replied to Claimants' Motion to Bar by urging that their Statement of Answer be considered and that it be allowed to present its defenses due to the fact that Respondent had good cause for its lateness in that it had to locate Mr. Egler in order to prepare their Statement of Answer. Respondent further argued that Claimants have not suggested that they have been harmed in any way by this brief delay.

RELIEF REQUESTED

Claimants William H. & Mary Lou Wilkinson requested \$10,000.00 in actual damages.

Respondent Shearson Lehman Brothers, Inc. requested the claim be dismissed.

AWARD

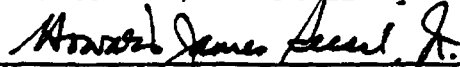
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Howard James Seesel, Jr., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on April 13, 1992 and by the Respondent on June 17, 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. Claimants William H. & Mary Lou Wilkinson's Motion to Bar is denied.
2. The claims of Claimants William H. & Mary Lou Wilkinson against Respondent Shearson Lehman Brothers, Inc. are dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants William H. & Mary Lou Wilkinson shall be retained by the NASD, Inc. Respondent Shearson Lehman Brothers, Inc. is liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

AFFIRMATION

I, HOWARD JAMES SEESSEL, JR., 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: September 18, 1992