

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Kent W. and Ann E. Rudesill

92-01451

Name of Respondents

Shearson Lehman Brothers, Inc. and  
Tom Marshall

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**REPRESENTATION OF PARTIES**

For Claimants at the hearing: Robert E. Woods, Esq. of Briggs and Morgan, Minneapolis, Minnesota.

For Respondents at the hearing: J. Jackson, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed: April 24, 1992. Amended Statement of Claim filed: November 5, 1992. Reply to the Joint Answer filed: August 27, 1992. Claimants' Submission Agreement signed on: April 22, 1992.

Joint Statement of Answer filed by Respondents on: July 6, 1992. Respondent Shearson Lehman Brothers, Inc.'s Submission Agreement signed on: June 10, 1992. Respondent Tom Marshall's Submission Agreement signed on: July 2, 1992.

**HEARING INFORMATION**

Hearing date: December 4, 1992 for two (2) sessions;  
December 9, 1992 for two (2) sessions;  
December 14, 1992 for two (2) sessions.

Pre-hearing Conference: November 9, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

### **CASE SUMMARY**

Claimants Kent and Ann Rudesill ("Claimants") alleged that Respondent Shearson Lehman Brothers, Inc. ("Shearson"), through its agent, Respondent Tom Marshall ("Marshall") recommended unsuitable investments. Claimants alleged that Marshall recommended that they get out of Revlon, that they buy some Allied Stores bonds on margin, and that they withdraw the balance of their Harvest Account Providence Life Insurance. Claimants also alleged that they did not like buying the Allied Bonds on margin, so they bought 50 National Gypsum, 50 Adelphia Comm., and 50 USG Corp to replace Allied. Claimants alleged that Allied, National, and USG bonds have gone into bankruptcy. Claimants alleged that Marshall should not have promised that the bonds would be watched in New York, should not have recommended the bonds, and should not have recommended that they go on margin.

In their Amended Statement of Claim, the Claimants set forth their claims with more particularity. In addition to the Statement of Claim, the Claimants alleged that the Allied Bonds were, in reality, junk bonds, which presented significant risk to anyone who invested in them. The Claimants alleged that they were never told of the CCC+ rating. The Respondents also recommended that the Claimants purchase \$50,000.00 in Adelphia Communications Senior Subordinated notes which were sold for \$46,000.00 in order to cover a margin call issued by Shearson resulting from the loss in value of the Allied Stores junk bonds.

Shearson and Marshall denied the allegations set forth in the Statement of Claim. Shearson and Marshall alleged that the Claimants knew the risks as indicated on the new client form. Shearson and Marshall alleged that the bonds at issue were recommended in good faith that they were good investments for the Claimants. Shearson and Marshall further alleged that the Claimants were knowledgeable and experienced investors and that they held margin accounts at PaineWebber, Drexel, and Shearson, and that the Claimants were informed of all information relevant to his investments and potential investments.

In their Reply to the Respondents' Answer, the Claimants denied ever telling Marshall that they wanted the highest income and gain potential available, denied that opening the margin account was their idea, and denied ever receiving a prospectus on Allied.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the sum of \$258,603.00 plus punitive damages in the amount of \$50,000.00, and reasonable attorney's fees.

Respondents requested that the arbitrators deny the Statement of Claim in its entirety and award Respondent their costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 remains on file with the NASD.

The Claimants submitted a request to amend their Statement of Claim pursuant to Section 39(b) of the Code of Arbitration Procedure and the Respondents submitted a response to their request. The panel granted the request to amend the claim.

At the close of the Claimant's case, Respondents moved for a directed verdict. The panel denied the motion.

### **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. Respondents Shearson Lehman Hutton, Inc. and Tom Marshall shall be and hereby are jointly and severally liable for, and shall pay to the Claimants Kent and Ann Rudesill, compensatory damages in the amount of Two Hundred Five Thousand Dollars and No Cents (\$205,000.00);
2. Respondents Shearson Lehman Hutton, Inc. and Tom Marshall shall be and hereby are liable for, and shall pay to the Claimants Kent and Ann Rudesill, attorney's fees in the sum of Twenty Five Thousand Dollars (\$25,000.00);
3. Claimants Kent and Ann Rudesill's request for punitive damages is denied;
4. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for under Forum Fees set forth below.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

6 hearing sessions X \$750.00 = \$4500.00, plus \$300 for the pre-hearing conference held

with the arbitrators=\$4800.00.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$4050.00 are assessed against the Respondents Shearson Lehman Hutton, Inc. and Tom Marshall, jointly and severally.

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

**By The Arbitration Panel:**

**Dated:**

January 26, 1993

/s/

Janice K. Frankman, Esq.  
Janice K. Frankman, Esq.  
Chairperson  
Public Arbitrator

January 20, 1993

/s/

Angela R. Banga, Esq.  
Angela R. Banga, Esq.  
Public Arbitrator

January 26, 1993

/s/

James Kaiser  
James Kaiser  
Industry Arbitrator

Date Award Served By The NASD: March 2, 1993