

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Elisabeth Y. Wilson

92-01457

Name of Respondents

Shearson Lehman Brothers, Inc.;
Erik Littlejohn

REPRESENTATION

For Claimant: Elisabeth Y. Wilson ("Wilson") was represented by Reid McInvale, Esq. of Houston, Texas.

For Respondent: Shearson Lehman Brothers, Inc. ("Shearson") and Erik Littlejohn ("Littlejohn") were represented by Janiece M. Longoria, Esq. of Andrews & Kurth, P.C., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: April 28, 1992.

Claimant's Submission Agreement signed on: April 24, 1992.

Statement of Answer filed by Respondents Shearson and Littlejohn on: June 17, 1992.

Respondent Shearson's Submission Agreement signed on: June 4, 1992 by Ann Parry, Vice President, Shearson Lehman Brothers, Inc.

Respondent Erik Littlejohn's Submission Agreement signed on: June 15, 1992.

Claimant's First Amended Statement of Claim filed: June 26, 1992.

Claimant's Second Amended Statement of Claim filed: July 1, 1992.

Respondents' Motion for Leave to First Amended Response to Statement of Claim filed: February 18, 1993.

Respondents' First Amended Response to the Statement of Claim filed: March 18, 1993.

HEARING INFORMATION

Pre-Hearing Conference: December 8, 1992 before One (1) arbitrator.

Hearing Dates/Sessions: April 8, 1993 for Three (3) sessions;
April 9, 1993 for Two (2) sessions;
May 3, 1993 for Three (3) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Wilson alleged that Respondent Littlejohn, while employed by or acting as agent for Respondent Shearson, misrepresented the returns from investments in various funds, thereby inducing Wilson to invest in unsuitable securities. In addition, Wilson alleged that Littlejohn purchased and sold the securities solely to generate commissions. Based upon these allegations, Wilson asserted claims for violation of the Federal securities laws; violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); violation of Texas Securities laws; violation of the Texas Deceptive Trade Practices Act-Consumer Protection Act ("DTPA"); violation of the New York Securities laws; breach of fiduciary duty; common law fraud; false representation; negligence; and breach of duty of good faith and fair dealing.

Respondents denied the material allegations of the Statement and Amended Statements of Claim, alleging that Wilson controlled her own financial affairs, frequently refused to follow Littlejohn's advice, and the losses in her account, if any, were attributable to her independent investment decisions. It was further alleged that Wilson received confirmation of every transaction in her account, discussed every trade with Littlejohn before it took place, reconciled her accounts and notified Shearson of any accounting errors. In addition, the Respondents asserted several affirmative defenses, including the following:

1. The claims under the DTPA should be dismissed because the Act does not apply to the purchase or sale of securities;
2. The claims are barred by the doctrines of ratification, waiver, estoppel and by the applicable statute of limitations;
3. Shearson maintained and exercised a reasonable system of supervision and control; and
4. Littlejohn did not breach any duty to Wilson.

In addition, Respondents asserted a counterclaim for attorneys' fees and costs pursuant to Section

17.50 of the DTPA.

RELIEF REQUESTED

Claimant Wilson requested entry of an award against Respondents for the sum of approximately \$500,000.00 in lost income or capital gain; compensatory damages of approximately \$46,041.00 for losses in her accounts; punitive damages in an unspecified amount; interest; attorneys' fees; and costs.

Respondents requested that the Statement of Claim be dismissed, that Respondents recover their attorneys' fees and costs, and for such other relief as the Respondents showed themselves entitled.

OTHER ISSUES CONSIDERED & DECIDED

The Respondents' Motion to File First Amended Response to Statement of Claim was granted by the Panel on March 18, 1993 after review of the Motion and any responses.

At the hearing on May 3, 1993, Respondents presented an oral Motion for Directed Verdict at the close of the Claimant's case. After hearing argument from the parties, the Panel excused the parties and went into executive session. After deliberating, the Panel determined that the Motion would be granted.

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 originals 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 Motion for Directed Verdict is hereby granted and the claims asserted by the Claimant are hereby dismissed with prejudice; and
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One prehearing conference session with One (1) arbitrator x \$300.00 per session = \$300.00; Five (5) hearing sessions x \$1,000.00 per session = \$5,000.00; Total fees = \$5,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 non-refundable claim filing fee and the \$1,000.00 hearing session deposit previously deposited by the Claimant, Elisabeth Y. Wilson. Claimant Elisabeth Y. Wilson is liable for and shall pay to the NASD additional forum fees in the sum of \$1,650.00. Respondents Shearson Lehman Brothers, Inc. and Erik Littlejohn are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$2,650.00.

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

Concurring Arbitrators' Signatures

Name

Date

Gordon W. Hall, Esq.
Gordon W. Hall, Esq.
Public Arbitrator
Chairperson

December 8, 1993

James P. Hoefling
James P. Hoefling
Public Arbitrator

December 9, 1993

Morris Rubin
Morris Rubin
Industry Arbitrator

December 8, 1993

For NASD Use Only

Date of Service of Award: 12-9-93