

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John & Judy Fitzgerald

Case No. 92-01543

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Ira Weiner

REPRESENTATION

For Claimants, John and Judy Fitzgerald ("the Fitzgeralds"): J. Anthony Penry, Esq. and Anne E. Essaye, Esq. of Petree Stockton & Robinson.

For Respondents, Shearson Lehman Brothers ("Shearson") and Ira Weiner ("Weiner"): George C. Covington, Esq. and Cory Hohnbaum, Esq. of Kennedy Covington Lobdell & Hickman.

CASE INFORMATION

Statement of Claim filed: April 30, 1992. Claimants' Submission Agreement signed: April 24, 1992.

Respondents, Shearson's and Weiner's, joint Statements of Answer filed: July 13, 1992. Respondents' Submission Agreements signed: June 17, 1992 by Ann Parry on behalf of Shearson, and August 4, 1992 by Weiner.

HEARING INFORMATION

On June 29 and 30, 1993, in Raleigh, North Carolina, hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimants alleged that despite the fact that they made it clear to Respondents that they had recently retired and that they wanted conservative investments because their savings would be their only source of income for the rest of their lives and

that they needed their investments to be liquid so that they would have sufficient funds available to pay cash to build a new home, Respondents recommended and purchased for their account an illiquid limited partnership, America First Tax Exempt Mortgage Fund ("America First"), which Respondents misrepresented as "guaranteed" and suitable for Claimants. Claimants further alleged that Respondents represented to them that after investing in America First they would have sufficient funds in their account to borrow against the account to pay for the house they intended to build. Claimants alleged that thereafter, the price of America First shares declined substantially causing Claimants substantial losses.

Respondents denied all allegations of wrongdoing and alleged that the investment was suitable based upon the Claimants' financial condition and objectives and that Claimants stressed that they wanted a higher yield on their investments and also the ability to borrow on margin. Further, Respondents maintained that Weiner fully informed Claimants about the advantages and disadvantages of investing in America First and that Claimants purchased America First knowing the risks. Additionally, Respondents stated that Weiner made no misrepresentations about how America First operated and that Weiner did not make any guarantees about America First's future performance.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$73,000; punitive damages in excess of \$10,000; costs including reasonable attorney's fees; other relief as is just and proper.

Respondents requested that the Panel award Claimants nothing on their claims.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimants filed an amendment to their pleadings. Respondent objected as to timeliness of filing and lack of 10-day notice under Section 39(b) of the Code of Arbitration Procedure, the Panel denied submission of the Amended Claim.
2. Claimants' counsel objected to two (2) different attorneys for Respondents questioning Claimants' witnesses. The objection was overruled since there was no simultaneous cross-examination.
3. 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson and Weiner, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$73,185.00.
2. Claimants request for attorney's fees, costs, expenses and punitive damages is denied.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (six sessions x \$500.00 per session).
2. Respondents, Shearson and Weiner, are hereby assessed \$3,000.00, jointly and severally, \$500.00 of which shall be paid directly to the Claimants, and \$2,500.00 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

James Edward Neal

Public/Chairman

/s/

Thomas C. Looney

Industry/Panelist

/s/

Edward T. Curry, Jr.

Public/Panelist

Date of Decision: September 1, 1993