

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between:

Name of Claimants

L.W. Llewellyn IND & TTEE/Llewellyn Charitable
Remainder Unitrust & D'Arlene B. Llewellyn

92-02452

Name of Respondents

Shearson Lehman Hutton, Inc.
Hugh S. Hill
John Lineweaver

REPRESENTATION

For Claimants, L.W. Llewellyn IND & TTEE/Llewellyn Charitable Remainder Unitrust & D'Arlene B. Llewellyn ("The Llewellyns"): Allan J. Fedor, Esquire of Fedor & Fedor and Jack Wm. Windt, Esquire.

For Respondents, Shearson Lehman Hutton, Inc. ("Shearson") Hugh S. Hill ("Hill") and John Lineweaver ("Lineweaver"): Jeffrey L. Friedman, Esquire and William Hohauser, Esquire of Shearson.

CASE INFORMATION

Statement of Claim filed: 7/24/92.

Amended Statement of Claim filed: 9/18/92.

Claimants' Submission Agreements signed on: 7/6/92 and by L.W. Llewellyn on behalf of Llewellyn Charitable Remainder Unitrust on: 9/14/92.

A joint Statement of Answer filed by Respondents, Shearson, Hill and Lineweaver filed: 1/25/93.

Respondent, Shearson's Submission Agreement and Corporate Acknowledgement signed by Jeffrey L. Friedman on behalf of the firm on: 1/22/93.

Respondent, Hill's Submission Agreement signed on: 1/26/93.

Respondent, Lineweaver's Submission Agreement signed on: 1/25/93.

HEARING INFORMATION

On 2/17/93, 3/10/93, 3/11/93, 3/12/93, 5/19/93, 5/20/93 and 5/21/93 hearings lasting thirteen (13) sessions were conducted. The arbitrators also viewed a videotape deposition of Mr. Llewellyn for twenty-eight (28) hours for a total of twenty (20) sessions.

CASE SUMMARY

Claimants, alleged that they were unsophisticated investors who recognized their own lack of financial expertise and therefore employed respondents to render professional financial advice and help they needed to invest their assets wisely and conservatively. Claimants alleged that despite their stated investment objectives of low risk and preservation of capital respondents, through various misrepresentations and omissions of material facts, duped claimants into purchasing thirty-nine (39) risky and illiquid limited partnerships for their accounts at Shearson. Additionally, claimants alleged that respondent, Lineweaver, further exploited their trust by convincing them to invest in a private deal of his own - a partnership to produce a play entitled "Little Mighty". Claimants alleged that the conduct of respondents constitutes a violation of securities laws and the rules of the NASD, common law fraud, negligence and a breach of fiduciary duty and that respondents' conduct also constitutes a pattern of criminal activity for which Florida law provides a treble damage remedy. Claimants further stated that Shearson is liable for its own conduct and for the conduct of Lineweaver and Hill under the common law theory of respondent superior.

Respondents denied the claims asserted in the Amended Statement of Claim and denied that they are liable to the Llewellyns for any damages whatsoever. Respondents further moved to dismiss the Claim pursuant to Section 15 of the NASD Code of Arbitration Procedure as to twenty-two of the limited partnerships at issue. Respondents maintained that when claimants opened their joint account with Lineweaver in April of 1982, that claimants explicitly advised Lineweaver that they desired to engage in long-term investments that would provide them with the opportunity to achieve capital appreciation and higher income than their previous investments had provided and that claimants advised Lineweaver that they had experience investing in stocks and bonds, including municipal bonds and that they were not interested in investing in those types of investment vehicles at that time. Respondents further maintained that as Mr. Llewellyn himself testified in his videotaped depositions, he had discussed each and every transaction with Mr. Lineweaver in all of claimants' accounts prior to execution and that he further testified that he viewed all of the monthly account statements and transactional confirmation slips evidencing all of the trading in claimants' accounts upon receipt from respondents

and that further, Claimants received various other documentation from the general partner of each limited partnership investment into which claimants entered, such as annual and quarterly reports, K-1 forms and miscellaneous correspondence that discussed and valued claimants' limited partnerships. Respondents contended that Mr. Llewellyn understood the investments completely and that Mrs. Llewellyn concurred with Mr. Llewellyn's decisions.

RELIEF REQUESTED

Claimants requested an Award of the following: rescission of their purchases that have not been sold; the amount paid for their securities plus interest thereon from the date of purchase at the legal rate of 12% per annum. Claimants also requested treble damages under the Florida Civil Remedies for Criminal Practices Act, plus attorneys' fees and costs.

Respondents requested that the Amended Statement of Claim be dismissed in its entirety and that the costs and disbursements associated with this matter be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

1. Prior to the commencement of the first hearing session, claimant, L.W. Llewellyn, died and the panel accepted into evidence his videotaped depositions taken prior to this death.

2. 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. Regarding those securities bought and sold by claimants after 1/7/86 the Respondent, Shearson, is found liable and shall pay to the Claimants the sum of \$959,806.24 which represents principal of \$1,252,000.00 plus interest at the rate of 8% per annum from the date the security was purchased to 8/31/93 in the amount of \$711,952.24, less distributions and proceeds from sale of \$1,004,146.00.

2. Regarding those securities bought and still owned by claimants, Malrite and Ramada, rescission is granted. The claimants shall assign to the Respondent, Shearson all their right, title and interest in said securities since the damage award for these products is included in the award made in paragraph one (1).

3. Respondents, Hill and Lineweaver, are found not liable and, therefore, all claims against them are hereby dismissed.

4. Claimants' request for treble damages is hereby denied.

5. It is the intent of the Panel that the rescissions, principal and interest awarded above be exclusively for the claimants and no part be used to pay attorneys' fees.

6. The Panel reserves jurisdiction to award forum fees, attorneys' fees and costs to claimants. In the event that the parties are unable to agree on attorneys' fees and costs a hearing shall be scheduled to dispose of said issues.

7. Respondents' request for disbursements and costs is hereby denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$12,000.00 (twenty (20) hearing sessions X \$600.00).

1. Respondent, Shearson, is hereby assessed forum fees of \$12,000.00, \$600.00 of which shall be paid directly to claimants and the remaining \$11,400.00 payable to the NASD, Inc.

2. The NASD shall retain the non-refundable filing fee of \$250.00 paid by Claimants.

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


ARBITRATION PANEL

Concurring Arbitrators' Signatures



PAUL SIDNEY ELLIOTT

Public/Chairman



JEAN M. LANG

Public/Panelist



RANDALL T. STACK

Industry/Panelist

Date of Decision: SEPTEMBER 7, 1993