

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimants**

John and Irene Homan

93-00447

**Name of Respondents**

Shearson Lehman Hutton and Robert A. Connell

**REPRESENTATION**

Claimants John and Irene ("Homan") were represented at the hearing by Frederick C. Kramer, Esq. of Marco Island, Florida.

Respondents Shearson Lehman Hutton and Connell ("Shearson") were represented at the hearing by Christine Tracey, Esq. of New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimant Homan on February 3, 1993. The Uniform Submission Agreement was signed by Homan on February 2, 1993.

Respondents filed two preliminary motions and an Answer on May 6, 1993. The Uniform Submission Agreement was signed by Respondents on June 21, 1993.

**HEARING INFORMATION**

The hearing was held on January 24 and 25, 1995 at the Holiday Inn Downtown in Philadelphia, Pennsylvania for a total of four (4) hearing sessions.

**CASE SUMMARY**

Claimants, alleged that Respondent, Shearson, acting through its employee, Connell, recommended unsuitable investments for Claimants in certain limited partnerships and, thereafter, covered up poor performance of these limited partnerships by misrepresenting the current value of them in a series of annual reports prepared by Connell and sent to Claimants.

Respondent maintained in its preliminary motions that the filing of the claim was time barred and that the claim regarding one of the limited partnerships was barred by a

Homan Award  
Case Number 93-00447  
Page 2

class-action settlement. In its answer, Respondent maintained that risks of the limited partnership ventures were fully disclosed to Claimants and that the investments were suitable for Claimants.

Claimants voluntarily withdrew their claim concerning the investment in Shearson Senior Income Fund, L.P.

#### RELIEF REQUESTED

Claimants requested damages of approximately \$246,000 representing an aggregate of the return of the commission earned by Respondent on the sales of the limited partnership interests, 8% return on the money invested in the limited partnership from the date of investment through December 31, 1994, the difference between the \$115,800 cost of the four limited partnership investments and their present value and any expenses incurred by Claimants in pursuit of their claim.

#### OTHER ISSUES CONSIDERED & DECIDED

On October 26, 1994 the Director of Arbitration ruled that Claimants' purchases made prior to February 3, 1987 would be permitted to go to the panel of arbitrators but only as to the allegation of wrongdoing made on or after February 3, 1987. All allegations of wrongdoing prior to February 3, 1987 are not eligible.

The parties agreed that the Award in this matter may be executed in counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original remains 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. While the panel finds that the Respondents acted improperly by recommending unsuitable investments to Claimants, e.g. Balcor Film, these acts preceded February 3, 1987 and are time barred.
2. The panel finds insufficient evidence of active concealment by the Respondent after February 3, 1987 and, therefore, finds in favor of Respondents on the Claimants' claim.

3. The parties shall each bear their respective costs, including attorneys' fees, except that Respondent is ordered to reimburse Claimants for their filing fee in the amount of \$200.

4. Any relief not specifically provided for herein is denied.

**FORUM FEES**

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

4 hearing sessions x \$750 = \$3,000

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200 previously paid by Claimants; but shall refund the hearing session deposit of \$750 previously deposited by Claimant.

The panel has ordered that the Respondent pay forum fees to the NASD in the amount of \$3,000.

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

By The Arbitration Panel:

Dated:

1/27/95

Steven T. Stern, Esq., Presiding  
Public Arbitrator

2/23/95

Maralynne Flehner, Esq.  
Public Arbitrator

3-1-95

Glen L. Nobel  
Industry Arbitrator

Date Award Served By the NASD: March 6, 1995