

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Ann Lea Locken

93-01157

and

Name of Respondents

Shearson Lehman Brothers, Mary Wichman and Ivan Hovey

REPRESENTATION OF PARTIES

Claimant, Ann Lea Locken ("Locken") was represented at the hearing by Bruce Pearson, Fargo, North Dakota.

Respondents, Shearson Lehman Brothers ("Shearson"), Mary Wichman ("Wichman"), and Ivan Hovey ("Hovey") were represented at the hearing by J. Jackson, Esq. and Catherine A. Gnatek, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on March 24, 1993. Submission Agreement of Claimant was signed on March 18, 1993.

Joint Statement of Answer was filed by Respondents, Shearson, Wichman, and Hovey on July 12, 1993. Submission Agreement of Respondent, Shearson was signed on June 30, 1993. Submission Agreement of Respondent, Wichman was signed on July 6, 1993. Submission Agreement of Respondent Hovey was signed on July 6, 1993.

HEARING INFORMATION

The hearing was held on June 1, 1994 for two sessions, June 2, 1994 for two sessions, and on June 21, 1994 for two sessions in Minneapolis, Minnesota for a total of six sessions.

CASE SUMMARY

Claimant Locken alleged that Respondents Shearson and Hovey failed to supervise its employee, Respondent Wichman, when Wichman sold investments which were not suitable and later were worth substantially less than what Wichman and Shearson represented to Locken. Locken alleged that Wichman purchased the following unsuitable investments in her IRA account after stating that she wanted safe investments: Century Hill limited partnership, GSH Storage limited partnership, Insured Pension limited partnership, Mendik limited partnership, Participating Income limited partnership, Silver Screen limited partnership, and purchased Hutton Real Advantaged Properties limited partnership, Jet Stream limited partnership, Liberty Tax Credit limited partnership, Participating Income limited partnership, Silver Screens limited partnership in her regular account and annuities: Baldwin-First Capital- IDS Life and F&G Life, Life of Virginia.

Respondents Shearson, Hovey, and Wichman ("Respondents") denied each and every allegation of wrongdoing contained in the Claim. Respondents stated that Wichman discussed the risks involved in the various investments with Locken and Locken ultimately made the decision to purchase the investments. Respondents further stated that the investments were considered to be quality products and were moderate, not speculative investments. Respondents set forth the following affirmative defenses in their Answer: failure to state a claim, failure to show causation, waiver, estoppel, and ratification, assumption of the risk, mitigation of damages, statute of limitations, and Section 15 of the N.A.S.D. Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant requested her damages in the amount of \$90,000.00.

Respondents requested that the Statement of Claim be denied in its entirety and that they be awarded their costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Shearson, Hovey, and Wichman filed a Motion To Dismiss pursuant to Section 15 of the N.A.S.D. Code of Arbitration Procedure. The Claimant filed a response. The Director made the initial determination on the motion and denied the motion in part and granted the motion in part.

At the hearing, the Respondents renewed their motion to dismiss to the panel, but the panel deferred ruling on the motion until the claim was heard.

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 N.A.S.D.

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 Claimant's Statement of Claim is denied in its entirety and the Respondents are hereby dismissed;
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the N.A.S.D. by the Claimant.

Forum fees are calculated at the rate of \$500.00 per hearing session x five sessions = net \$2500 due. The panel has ordered that the Claimant pay additional forum fees to the N.A.S.D. in the amount of \$1000 and Respondents, jointly and severally, pay \$1500 to the N.A.S.D.

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

Emily F. Seesel s/s

Dated:

July 21, 1994

Emily F. Seesel, Esq.
Public Arbitrator, Presiding Chair

Piedad A. Bernikow s/s

July 25, 1994

Piedad A. Bernikow, Esq.
Public Arbitrator

Roger E. Larson s/s

July 21, 1994

Roger E. Larson ** Dissenting
Industry Arbitrator

Date Award Served By The N.A.S.D.: August 10, 1994.