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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Kenneth and Gail Rosenthal

93-01523

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Donald I. Levy

REPRESENTATION

For Claimants, Kenneth and Gail Rosenthal ("Rosenthal"): pro se by Kenneth Rosenthal.

For Respondents, Shearson Lehman Brothers, Inc. ("Shearson") and Donald I. Levy ("Levy"): Ellen Slipp, Esq. of Shearson.

CASE INFORMATION

Statement of Claim filed: April 15, 1993. Claimants' Submission Agreement signed on: April 2, 1993,

Respondents' Joint Statement of Answer filed: June 8, 1993. Respondents' Submission Agreements signed: June 8, 1993 by Ann Parry on behalf of Shearson and May 18, 1993 by Levy.

HEARING INFORMATION

On April 27, 1994, in Fort Lauderdale, Florida, hearings lasting two sessions were conducted.

CASE SUMMARY

Claimants alleged that they are a retired couple unsophisticated in investing; that Respondent Levy, acting in the course and scope of his employment with

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Shearson, failed to execute Claimants' order to cancel an open options order; that Respondents' actions constituted violation of Article III, Section 33 of the **NASD Rules of Fair Practice (RFP)**; Article III, Section 27 of the NASD RFP and NYSE Rule 342; violated the standards of the profession and implied covenant of good faith and fair dealing; that Respondents made negligent misrepresentations of material facts; and, that as a direct and proximate result of Respondents' conduct, Claimants have suffered damage.

Respondents, denied all allegations of wrongdoing and alleged that Mr. Rosenthal attempted to cancel his order and, by that time, the order had already been executed as per his instructions. He called at 1:52 and had a three minute conversation, by the time the phone call was relayed to CBOE the order had been filled. The customer was informed immediately.

RELIEF REQUESTED

Claimants requested restitution in the amount of \$14,633.60; pre and post award margin interest; pre and post award interest; attorney's fees in the amount of \$400.00; and, punitive damages.

Respondents requested dismissal and costs.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) 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 **are** found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorney's fees, costs, and punitive damages are denied.
3. Respondents' requests for attorney's fees and costs **are** denied.

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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 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (2 sessions x \$400.00).

1. Claimants ~~are~~ hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited in full satisfaction thereof.
2. Respondent, **Shearson**, is hereby assessed \$400.00 payable to the National Association **of** Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee **of** \$100.00 paid ~~by~~ the Claimants.

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

Concurring Arbitrators' Signatures

JS/
Joseph L. Bernstein, Esq.

Public

JS/
Abe ~~Mintz~~

Public

JS/
Calvin D. Ceva

Industry

Date of Decision:

5/31/94