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N.A.S.D. AWARD

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NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Chester P. Rosen

93-03289

Names of Respondents

Shearson Lehman Hutton, Inc.
William Haas

REPRESENTATION

For Claimant, Chester P. Rosen ("Rosen"): Chandra L. Parker and Mitchell Perlstein of Parker Perlstein & Co., Boca Raton, FL.

For Respondents, Shearson Lehman Hutton, Inc., ("Shearson") and William Haas ("Haas"): Neil A. Sussman, Esq. of Smith Barney Shearson, New York, NY.

CASE INFORMATION

Statement of Claim filed: August 17, 1993

Claimant's Submission Agreement signed on: June 28, 1993.

Respondents' Joint Statement of Answer filed: October 19, 1993.

Respondent, Shearson's, Submission Agreement signed: October 12, 1993, by Neil A. Sussman on behalf of Shearson.

HEARING INFORMATION

On October 12, and 13, 1994, in Ft. Lauderdale, Florida, hearings lasting 4 sessions were conducted.

CASE SUMMARY

Claimant, alleged that this claim is based on the misrepresentation of the call features of Municipal bonds purchased through Respondents. Claimant stated

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that: at extra expense as he was a stockbroker himself, he specifically sought out the municipal bond expertise of Respondents; that he informed Respondents that he was ceasing work and specifically wanted a group of AAA municipal bonds with a minimum call protection of 9-10 years, as he would be living off the income generated therefrom; that Respondents prepared and furnished claimant with a schedule showing the bond purchases, the income stream and timing thereof, and the "callable" date for the subject bonds; that Subsequently, Claimant was notified that the subject bonds will be called from two to four years earlier than he was told and was shown on the schedule; that despite the fact that the bonds' market value has significantly increased since their purchase, Claimant alleges a definite loss of future income in the amount of approximately \$134,000.00 as he had specifically purchased a certain known yield and was not interested in the fluctuations of the market value of the bonds. Claimant stated that his ability to mitigate the loss is speculative due to interest rate volatility, but his loss of income is able to be calculated and is reducible to monetary damages.

Respondents, Shearson and Haas, denied all allegations of wrongdoing and asserted that: Claimant requested the above-described bonds, which he was provided, but that the primary concerns were the rating and yield of the bonds, which he admittedly received; with respect to the holding periods sought, the time specified was in the approximate range of 8 to 10 years, to the extent available; Haas disclosed to Claimant, who was himself a licensed securities broker at the time, that the bonds could be pre-refunded sooner, at a premium, but the call dates listed were the "lowest yield to call dates" which ensured that absent a catastrophic call, Claimant would receive the minimum yield stated. Respondents further asserted that Claimant had actual knowledge of the earlier optional call dates disclosed on his monthly account statements Claimant testified he received. Respondents stated that: further indicative that the holding period was understood to be simply an approximate range was that Claimant himself at the time of the purchase of the bonds complained of actually purchased \$400,000 of similar bonds from his own firm, G.K. Scott, with optional call periods ranging from four to seven years; that Claimant testified he was aware, with at least two of the bonds complained of, that the holding periods were between six to seven years conflicting his earlier statements; that with respect to the spreadsheet, the document did not contain any misrepresentations; that, regardless, since it was prepared after the purchases complained of, Claimant could not have relied on it in his decision to purchase the bonds. Respondents asserted that Claimant has not sustained any damages, that, in fact Claimant experienced a net gain of over \$300,000 to date on the bonds complained of. Additionally, Respondents contended, that since the damage philosophy presented by Claimant required speculation and conjecture, under applicable law, such alleged damages cannot be awarded in a claim for lost profits.

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RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$100,000.00; costs and fees of this action and costs and expenses of expert witnesses; reasonable attorney's fees; and, such other relief as the Arbitrators find appropriate under the circumstances.

Respondents requested dismissal of the Claim and that they be awarded attorney's fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

None.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson & Haas, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorney's fees, expert witness fees and costs are denied.
3. Respondents' requests for attorney's fees and costs are 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

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00.

1. Claimant is hereby assessed forum fees in the amount of \$750.00 for which the NASD shall retain the \$750.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondent, Shearson, is hereby assessed forum fees in the amount of \$750.00 payable to the NASD, Inc.

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3. The NASD shall retain the \$200.00 non-refundable filing fee paid by Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Stan West, Esq.

Public/Chairman

/s/

Judy Avey

Public/Panelist

/s/

David L. Yerkes

Industry/Panelist

Date of Decision: November 28, 1994