

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edmund P. and Cheryl B. Harrington

vs.

Award No.
93-04318

Name of Respondents

E.F. Hutton & Company, Inc.
Mark E. Routhier

REPRESENTATION

For Claimants, Edmund P. Harrington and Cheryl B. Harrington ("Claimants"), Deborah J. Bero, Esq., located in Norwood, Massachusetts.

For Respondents, E. F. Hutton and Mark E. Routhier ("Respondents"), Sean J. Coughlin, Esq., in-house counsel at Smith, Barney Shearson, Inc. located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on October 18, 1993.

Claimants' Submission Agreement was signed on October 14, 1993.

Joint Statement of Answer and Motion to Dismiss was filed by Respondents on May 9, 1994.

Claimants' Opposition to Motion to Dismiss was filed on June 29, 1994.

Respondents' Reply to Claimants' Opposition to Motion to Dismiss was filed on July 5, 1994.

HEARING INFORMATION

Hearing Date/Sessions: October 26, 1995 - 2 sessions

Hearing Location: The Berkeley Room
 Ritz-Carlton Hotel
 Boston, Massachusetts

CASE SUMMARY

Claimants made several allegations sounding under both federal and state law of wrongdoing with regard to the joint account they established at E.F. Hutton in November, 1986. Claimants alleged that they were induced by Mr. Routhier to invest and trade in stocks of New England banks that were in the process of converting to public share ownership and that might thereafter to merger targets. They additionally alleged that they were pressured to open a margin account and to purchase on margin despite the fact that the funds for their initial investments came from the proceeds of mortgages on their real estate properties. They further claimed that the lack of wisdom and unsuitability of the strategy of investing in bank stocks became apparent to them on Black Monday, October 19, 1987. Claimants, the next day caused Respondent Mark Routhier, the representative at E.F. Hutton, to sell stocks held in their account and suffered losses of some \$78,000. Claimants did not file for arbitration of their dispute with the NASD, however, until October 18, 1993, a few days before the six-year period of eligibility set forth in NASD Rule 15 would on its face have expired.

In its answer, E. F. Hutton moved to dismiss all of Claimants causes of action as without merit and also moved for the dismissal of all claims based on transactions within the account that had occurred more than six years prior to the filing of the action.

RELIEF REQUESTED

Claimants requested damages in the sum of \$78,000 plus interest and attorneys' fees.

Respondents requested the denial of Claimants' requests for relief both on the merits and as barred by the eligibility rule of the NASD.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed at the hearing that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Shortly after filing their answer, Respondents brought suit in state court in New York to permanently enjoin the arbitration as time-barred. Complainant successfully sought dismissal of the New York suit on the basis of lack of personal jurisdiction. The Director of Arbitration at the NASD granted the motion with respect to the eligibility rule on November 17, 1994 and ruled that claims made as to purchases effected in the account prior to October 18, 1987 would be permitted to be heard by the arbitrators only as to allegations of wrongdoing made on or after October 18, 1987.

Respondents then requested that a single or full panel of arbitrators rule in confirmation of the Director of Arbitration's ruling and further requested the dismissal of the action that there remained no actionable events, as to which they in any case denied any wrongdoing or potential liability. Claimants opposed the

dismissal and asked for leave to argue that a "discovery rule" prevailed and that there had occurred in the two days following Black Monday such events that would show only then could they have realized that the bank stock purchases urged by Respondent Routhier had been in error and that the "plan" that they claimed Routhier to have authored was fraudulent and misleading.

At the beginning of the hearing on October 26, 1995, Respondents renewed their motion to dismiss and the motion was argued orally by counsel for both parties. The arbitrators, after deliberation, reaffirmed the Director of Arbitration's ruling as to the time eligibility of the events alleged to constitute wrongdoing in the account but stated that, in accordance with the second paragraph of the Director's ruling, they would hear evidence as to earlier events if such evidence related to the argument that the wrong-doing only came to light when the securities were sold following Black Monday. At the conclusion of the Claimants' presentation of evidence, Respondents' counsel moved for a directed verdict on the basis that Claimants had failed to prove any wrongdoing at all in the account at any time. The arbitrators informed the parties that they would reserve their ruling on the Respondents' motion for a directed verdict and asked Respondents' counsel briefly to present Mr. Routhier as a witness on certain points.

Following the presentation of Respondents' evidence and the presentation of closing arguments from the parties' counsel, the arbitrators met and reached their conclusions which are set forth in the arbitral award below.

The arbitrators considered and upheld the Director of Arbitration's ruling on November 17, 1994 that the eligibility bar in NASD Rule 15 prevented the presentation of evidence as to the purchase transactions being in themselves actionable wrongs and that the scope of the presentation of evidence with regard to the purchase of securities was therefore limited.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, there having been no post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants have failed to prove any wrongdoing on the part of either Respondent and the claims against the Respondents are therefore denied.
- 2) The arbitrators further decided that the forum fees should be split equally between the parties.

FORUM FEES

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

Non-refundable Filing Fee: \$150.00

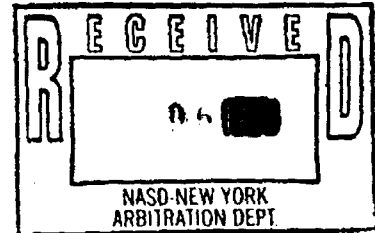
Hearing Session Fee: \$1,000.00 (2 hearing sessions @ \$500.00 per session)

Total Fees: \$1,150.00

- 1) Claimant is assessed a non-refundable filing fee of \$150.00. Claimant is further assessed \$500.00. Claimant previously paid \$650.00 and owes nothing.

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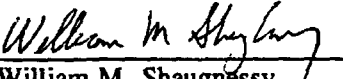
2) Respondents are jointly and severally assessed \$500.00

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

ARBITRATION PANEL

Priscilla F. Gray, Esq.	-	Public Chairperson
William M. Shaugnessy	-	Public Panelist
Julian Daly, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature


William M. Shaugnessy

NASD's Date of Decision: November 18, 1995

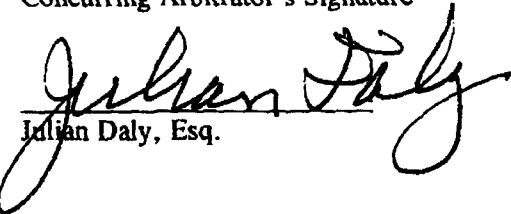
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Concurring Arbitrator's Signature


Julian Daly, Esq.

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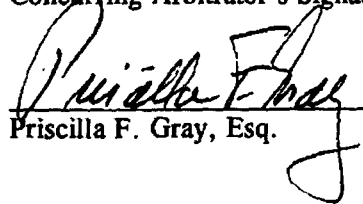
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