

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Jon D. Krupa

93-04784

**Name of Respondents**

Shearson Lehman Hutton, Inc.; and  
William Dolan

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**REPRESENTATION**

For Claimant: Jon D. Krupa ("Krupa") was represented by Edward Earl Duke II, Esq. of Pierce Donovan Duke Mordell & Messano, located in Birmingham, Michigan.

For Respondents: Shearson Lehman Hutton, Inc. ("Shearson") and William Dolan ("Dolan") were represented by John P. Bevilacqua, Esq., of Shearson Lehman Brothers, Inc., located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: November 18, 1993.

Claimant's Submission Agreement signed on: November 15, 1993.

Statement of Answer filed by Respondent on: March 4, 1994

Respondent Shearson's Submission Agreement signed on: March 4, 1994 by John P. Bevilacqua, Vice President and Associate General Counsel, Smith Barney Shearson, Inc.

Respondent Dolan's Submission Agreement signed on: March 15, 1995.

Amended Statement of Claim filed: August 4, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: December 13, 1994 for Two (2) sessions;  
January 23, 1995 for One (1) session.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimant Krupa alleged that Respondent Dolan, while employed by or acting as an agent for Respondent Shearson, misrepresented certain investments, inducing Krupa to make transactions which were unsuitable given his investment objectives. The Claim specifically alleged that:

1. Krupa is inexperienced, uneducated and unsophisticated when it comes to business matters. These characteristics would have been apparent to Dolan when Krupa opened his account in February 1988, and Krupa advised Dolan of his financial inexperience several times after the account was open;
2. Krupa advised Dolan that in February 1987, he received approximately \$187,000.00 as settlement of a personal injury claim. As a result of the injury, Krupa was unable to work. Furthermore, Krupa advised Dolan that he had lost approximately \$95,000.00 in the October 1987 stock market crash and that his paramount investment objective was capital preservation and the safest investments;
3. Dolan held himself out as being extraordinarily qualified to attend to Krupa's investment needs and to follow the Claimant's directives of investment safety. In addition, Dolan represented that because of Shearson's size and facilities, Krupa could expect capital preservation and a substantial growth rate while maintaining his investment objective. In reliance on these representations, Krupa opened his account;
4. Krupa invested substantial monies with Respondents from February 24, 1988 to December 8, 1995. Dolan induced Krupa to make numerous trades which provided Dolan with commissions in excess of \$7,667.24, but resulted in substantial losses for Claimant;
5. The representations Dolan made to Krupa were false and operated as a fraud and deception on Krupa. Furthermore, Dolan negligently induced Krupa to authorize trades which were contrary to Krupa's best interests and investment objectives;
6. The Respondents breached their fiduciary duty to Krupa by purchasing, selling and retaining securities by and through misrepresentation and omission;

engaging in excessive trading activities; trading in securities that were unsuitable in light of Krupa's investment objectives; trading in a manner unsuitable for Krupa; and by Shearson's failure to adequately supervise Dolan; and

7. Respondents' actions and failures to act constituted breach of contract.

Respondents denied the material allegations of the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. Krupa failed to state a claim upon which relief can be granted;
2. Krupa is barred from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches because he failed to complain promptly after receipt of confirmations and statements;
3. Krupa failed to timely notify Respondents of the objection to the trading or act to change his investment strategies, and is barred from recovery;
4. The claims are barred by the applicable statute of limitations; and
5. To the extent the claim requested punitive damages, New York law does not permit an award of punitive damages in arbitration.

#### **RELIEF REQUESTED**

Claimant Krupa requested entry of an award against Respondents in the sum of \$100,000.00 in actual damages plus interest; and attorneys' fees and costs.

Respondents requested that the Statement of Claim be dismissed and the costs and expenses (including attorneys' fees) incurred in this proceeding be awarded to them.

#### **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 originals remain 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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically granted is hereby denied.

**OTHER COSTS**

The NASD shall retain \$250.00 of the \$500.00 postponement fee previously paid by Claimant, Jon D. Krupa as payment of the forum fees assessed below. The remaining \$250.00 shall be retained by the NASD as payment of the postponement fee assessed against the Claimant, Jon D. Krupa.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$500.00 per sessions = \$1,500.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimant, Jon D. Krupa. In addition, Claimant Jon D. Krupa is liable for and shall pay to the NASD additional forum fees in the sum of \$250.00. Respondents Shearson Lehman Hutton, Inc. and William Dolan are jointly and severally responsible for and shall pay to the NASD the sum of \$750.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

s/ Norman Bristol  
Norman Bristol, Esq.  
Public Arbitrator/Chairperson

April 4, 1995

/s/ Marvin I. Horowitz  
Marvin I. Horowitz, Esq.  
Public Arbitrator

March 17, 1995

/s/ Frank G. Bank  
Frank G. Bank  
Industry Arbitrator

March 27, 1995

For NASD Use Only/Date of Service of Award: April 10, 1995