

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harold Gillet

94-00433

Name of Respondents

Smith Barney Shearson, Inc.
Lester G. Kaufman

REPRESENTATION

For Claimant, Harold Gillet ("Gillet"): Arnold Steinberg, Esq. of Boca Raton, Florida.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson") and Lester Kaufman ("Kaufman"): Ellen Slipp, Esq. of Smith Barney, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: January 3, 1994. Claimant's Submission Agreement signed: October 29, 1993.

Joint Statement of Answer filed by Respondents: June 24, 1994. Respondents' Submission Agreement signed: June 23, 1994 by Kaufman, and June 7, 1994 by Ellen Slipp on behalf of Shearson.

HEARING INFORMATION

On April 20, 1995, in Fort Lauderdale, Florida, a hearing lasting 2 sessions was conducted.

CASE SUMMARY

Claimant alleged that he was induced to purchase shares in American Southwest Mortgage Investors by Respondent, Kaufman; that Respondents are liable for fraud, negligence, breach of fiduciary duty, and negligent supervision; and, that the claim for the sale of unregistered securities were dropped at the time of the hearing.

Respondents denied all allegations of wrongdoing and alleged that Kaufman did not make any of the statements attributed to him by Gillet; that Gillet was fully informed about the risks relevant to purchasing ASR, including the effect of fluctuating interest rates; that he was told that if the stock dropped to 6-1/2, he should sell his shares; that when this occurred, Gillet failed to sell and only complained much later to the Branch Manager, stating that if the stock rebounded he would have no problem; that he then waited one year and seven months before filing his NASD arbitration; that Gillet is very experienced and wealthy, and has several interests in real estate ventures, such as BGW Development Corporation and Tuthill Finance, a mortgage lending institution; that because of his experience both as an investor and in real estate, he did not rely on the statements of Kaufman when deciding to purchase ASR; and, that the loss in ASR shares purchased at Gilford, a full service broker, cannot be attributed to Respondent.

RELIEF REQUESTED

Claimant requested damages in the amount of \$25,828.00, interest and costs.

Respondent 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 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:

Respondents, Shearson and Kaufman are found not liable and, therefore, all claims against them are hereby dismissed.

OTHER COSTS

None.

FORUM FEES

1. 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).

2. Respondent, Shearson, is hereby assessed \$800.00, \$300.00 of which shall be paid directly to the Claimant in reimbursement of the \$300.00 session deposit previously paid by Claimant, and \$500.00 of which shall be paid to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

4. The NASD shall retain the session deposit of \$300.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

MS/
Monica I. Salis, Esq.

MS/
Anthony Paetro, Esq.

MS/
Norman Weiss

Date of Decision: 4/28/95