

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ernest & Betty LeDoulx

94-01352

Name of Respondent(s)

Shearson Lehman Brothers, Inc. n/k/a
Smith Barney Inc.
Shawn P. Kelly
Mark Willis

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 11, 1994, Claimants Ernest and Betty LeDoulx, who appeared Pro Se, alleged that Respondents Shearson Lehman Brothers, Inc. n/k/a Smith Barney Inc., Shawn P. Kelly and Mark Willis failed to process his request to purchase \$125,000.00 of Alliance North American Government Income Fund, although they had received a confirmation document which reflected the wrong trade date, 2/23/93 instead of 2/23/94. The Claimants further alleged that Respondents were ordered to trade out of all funds from North American and into Mortgage Strategy, but that this was not done for their shares of the Alliance North American Fund, and they discovered that Respondents contended they never received the money or the instructions. Claimants Ernest and Betty LeDoulx alleged that they have suffered damages due to the wrongdoing of the Respondents and their unwillingness to correct their error, and therefore the Respondents should be held liable for the losses they have incurred.

Respondents Shearson Lehman Brothers n/k/a Smith Barney Inc., Shawn P. Kelly and Mark Willis, through their representative and in-house counsel, Ann Parry, Esq., maintained that Claimants received preferential treatment in taking and processing their order to purchase approximately \$125,000.00 of the Government Fund, that the order was indeed received and processed by Alliance (the fund), and further that Claimants have previously asked for and received written explanations regarding the misunderstanding precipitated by Claimants direct contact with the Fund. The Respondents further maintained that they have committed no wrongdoing and therefore, the claims should be dismissed.

RELIEF REQUESTED

Claimants Ernest and Betty LeDoulx, requested \$5,554.00 in actual damages, plus interest, expenses and costs.

Respondents Smith Barney Inc., Shawn P. Kelly and Mark Willis, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, H. Rollin Allen, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on April 5, 1994, by Respondent Smith Barney Inc. on August 31, 1994 and by Respondents Shawn P. Kelly and Mark Willis on August 30, 1994.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Ernest and Betty LeDoulx against Respondents Smith Barney Inc., Shawn P. Kelly and Mark Willis are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, H. Rollin Allen, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read 'H. Rollin Allen', is written over a horizontal line.

H. Rollin Allen

DATE OF DECISION: September 28, 1995

REPORT OF ARBITRATOR

Claimants failed to set forth any violation of duties by Respondents. Respondents apparently promptly carried out Claimants' orders. Claimants made no allegation that Respondents breached a suitability responsibility. Claimants have not charged Respondents acted with intent to deceive or were guilty of gross negligence. Claimants make no charge that the broker was guilty of churning. Claimants make no charge of misrepresentation, omission of material facts or unauthorized trading. Claimants have failed to allege any conduct of Respondents that violated federal law, state law or common law. Claimants have failed to allege any conduct of Respondents that violated any rules and regulations. There was an incorrect trade date - 2/23/93 instead of 2/23/94, which may have caused some confusion, but was not responsible for any loss suffered by Claimants.