

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Aslan Atri and Julieta Atri,

Claimants,

v.

Case Number 95-04924

Shearson Lehman Hutton, Inc.
(a/k/a Shearson Lehman Brothers, Inc.
and n/k/a Smith Barney, Inc.),
and Richard J. Settle,

Respondents.

REPRESENTATION OF PARTIES

Claimants Aslan Atri and Julieta Atri were represented by Maria Estella Perez, Esquire, Sole Practitioner, of Brownsville, Texas.

Respondents Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.) and Richard J. Settle were represented by Janiece M. Longoria, Esquire, and Suzanne Killian, Esquire, of Andrews & Kurth, L.L.P., located in Houston, Texas.

CASE INFORMATION

Claimants Aslan Atri and Julieta Atri's joint Statement of Claim was filed on or about October 18, 1995.

Claimants Aslan Atri and Julieta Atri's First Amended Statement of Claim was filed on or about May 10, 1996.

Claimants Aslan Atri and Julieta Atri's joint Submission Agreement was signed on January 4, 1995.

Respondents Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.) and Richard J. Settle's Statement of Answer was filed on or about January 10, 1996.

Respondents Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.) and Richard J. Settle's Response to Claimants' First Amended Statement of Claim was filed on or about June 10, 1996.

Respondent Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. n/k/a Smith Barney, Inc.)'s Submission Agreement was signed on February 1, 1996, by James Goddard, Vice President and Associate General Counsel of Smith Barney, Inc.

HEARING INFORMATION

A pre-hearing conference was held on October 17, 1996, for one (1) session.

The hearing was held on: October 22, 1996, for two (2) sessions; and
 October 23, 1996, for two (2) sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Claimants Aslan Atri and Julieta Atri alleged that their broker, Respondent Richard J. Settle ("Settle"), through his employer, Shearson Lehman Hutton, Inc. [(a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc. ("Smith Barney"))], (hereinafter collectively referred to as "Respondents") failed to follow investment instructions, made unsuitable and unauthorized trades, and made misrepresentations and omissions of material facts. Claimants stated that they had a money market account and a non-discretionary corporate bond account and that Respondents were instructed not to invest any more money into the corporate bond account, divest Claimants of all corporate bonds in that account, and place all proceeds in the money market account. Claimants asserted, however, that Respondents sold one corporate bond, with authority, but took the proceeds from this sale in addition to proceeds from the money market account and purchased corporate bonds in Lomas Financial Corp, which was already experiencing financial difficulties and eventually filed for bankruptcy protection causing its corporate bonds to be almost worthless. According to Claimants, they were never contacted, informed, or advised about the purchase or damages resulting from the Lomas Financial Corp. bond purchase, but when they discovered the transaction, they sent a letter demanding that it be voided, annulled and cancelled. Claimants further asserted that as a direct result, they lost substantially all of the money invested, in addition to other losses. Claimants made the following legal claims: (1) violations of the Texas Business and Commerce Code, Deceptive Trade Practices and Consumer Protection Act Sections 17.46(a)(b), (5), (7), (12), (14), (19), and (23); (2) breach of fiduciary duty; (3) breach of duty of good faith and fair dealings; (4) breach of contract; (5) common law fraud; and (6) common law negligence.

Respondents denied the allegations set forth in the Statement of Claim. According to Respondents, Claimants' stated investment objectives were appreciation with risk and income with risk, and that Claimants' previous investments in commodities shows that they were not risk averse. Respondents stated that Claimants were financially capable of bearing the risks of the bond market, which they chose to do, and Claimant Aslan Atri controlled all activity in the account. Respondents further stated that the bonds Claimants purchased were reasonable in light of their investment objectives,

and that no information was withheld concerning Lomas Financial Corp. Respondents made the following defenses: (1) Respondents neither breached any duty to Claimants nor were liable to Claimants for any damages; (2) Claimants' claims were barred in whole or in part by Claimants' contributory and comparative fault; (3) Claimants' claims were barred from recovery under the doctrine of ratification; (4) Claimants' claims were barred from recovery under the doctrine of waiver; (5) Claimants' claims were barred from recovery under the doctrine of estoppel; (6) at all relevant times, Respondent Smith Barney, Inc. (f/k/a Shearson Lehman Hutton, Inc. and Shearson Lehman Brothers, Inc.) maintained and exercised a reasonable system of supervision and control over its employees and agents; (7) Respondent Richard J. Settle did not know and, in his exercise of reasonable care, could not have known of the untruths or omissions complained about in the Statement of Claim, or alternatively, Claimants knew of such alleged untruths or omissions; (8) Claimants' claims were barred by the applicable statutes of limitations; (9) the losses in Claimants' account were attributable to the acts of Claimants or to independent market conditions beyond the control of Respondents; (10) Claimants' claims were barred by laches; (11) Claimants' claims were barred from recovery by their own failure to mitigate their damages; (12) Claimants' failed to state a claim for churning, since all transactions in the account were executed at the Claimants' express instructions; and (13) Claimants' claims were ineligible for submission to arbitration because they were barred by the six-year eligibility rule contained in the Code of Arbitration Procedure Section 15.

RELIEF REQUESTED

Claimants Aslan Atri and Julieta Atri requested: an award for actual damages in an amount greater than \$100,000.00 but less than \$500,000.00 and an award for punitive damages in an amount not to exceed \$1,500,000.00; and an award for attorneys' fees..

Respondents Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.) and Richard J. Settle requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

This matter was referred to arbitration by court order dated September 22, 1995 from the presiding judge in the District Court of Cameron County, Texas, 107th Judicial District.

Respondent Richard J. Settle did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 10301 of the Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At hearing, Respondents Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.) and Richard J. Settle moved to dismiss the claims asserting that they were

frivolous and that there was no evidence to support the pleadings. After considering the arguments made by the parties, the panel of undersigned arbitrators denied this motion.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. That the Statement of Claim and the First Amended Statement of Claim are both denied in their entirety and dismissed with prejudice; and
2. The parties shall bear their own costs including attorneys' fees except for those fees and costs such as forum fees specifically enumerated herein; and
3. All other claims and requests for relief not specifically awarded are hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference. There was one (1) pre-hearing conference x \$300.00 = \$300.00 and there were four (4) hearing sessions x \$750.00 = \$3,000.00 in forum fees. Total forum fees are \$300.00 + \$3,000.00 = \$3,300.00. Pursuant to Section 10332(b) of the Code of Arbitration Procedure, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 10332(c) of the Code of Arbitration Procedure (the "Code"), National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants Aslan Atri and Julieta Atri.

Pursuant to Section 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350.00 previously paid to the NASD Regulation, Inc. Office of Dispute Resolution by the

Respondent Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.)

In accordance with Section 10332 of the Code, Claimants Aslan Atri and Julieta Atri are hereby, jointly and severally, liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution additional forum fees in the amount of \$900.00.

Respondents Shearson Lehman Hutton, Inc. (a/k/a Shearson Lehman Brothers, Inc. and n/k/a Smith Barney, Inc.) and Richard J. Settle are hereby, jointly and severally, liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,650.00.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Signed:

Dated:

J. Randle Henderson, Esquire

December 2, 1996

J. Randle Henderson, Esquire
Public Arbitrator, Presiding Chair

George L. Robertson, Esquire

November 27, 1996

George L. Robertson, Esquire
Public Arbitrator

Thomas H. Vann

November 27, 1996

Thomas H. Vann
Industry Arbitrator

Date served by the NASD Regulation, Inc.: December 4, 1996