

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joan M. Larsen

96-03901

Name of Respondents

E.F. Hutton & Company, Inc.
Tim Burkes

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on September 3, 1996, claimant Joan Larsen ("claimant"), who appeared Pro Se, alleged that respondents E.F. Hutton & Company, Inc. ("E.F. Hutton") and Tim Burkes ("Burkes") recommended claimant invest in a limited partnership. Claimant asserted that Burkes promised big returns as well as a pay off in ten years. Claimant further asserted that in 14 years, she has seen three checks that have amounted to more than \$50.00.

Claimant also asserted that Burkes asked her to fill out the necessary limited partnership forms and sign them. Claimant contended that the form stated that in order to invest in a limited partnership, the applicants annual income had to be \$30,000.00 or more. Claimant further contended that she told Burkes that she did not make anywhere near that amount, and Burkes told her to leave it blank and that he would take care of it. Claimant also contended that it has been fourteen years and she does not remember the specific amount, but she recalls that she was a little shocked by the amount on the application. Claimant alleged that in 1985, her house burned down and she lost all her papers. Claimant further alleged that in 1990 or 1991, she requested copies of her paper work from E.F. Hutton, and was denied. Claimant also alleged that she informed E.F. Hutton that Burkes had falsified her income amount and was told that Burkes no longer for them and there was nothing to be done. Claimant asserted that over the years she tried to get the information from them to try and sell her shares; but that E.F. Hutton will not even discuss it with her.

Respondent E.F. Hutton through its representative and in-house counsel John Bevilacqua, maintained that claimant purchased 16 units of Hutton/Conam ("HC") at \$500.00 per unit in 1983. Respondent further maintained that at the time claimant made her investment, she signed a subscription agreement ("agreement") indicating that she had received a copy of the prospectus. Respondent also maintained that the prospectus sets forth the objectives and risks attendant to an investment in HC. Respondents contended that by signing the agreement claimant unequivocally indicated that she was suitable for this investment. Respondent further contended that the agreement has no blanks areas to be filled in by the purchaser of the units. Respondents also contended that the units still have a present day market value and have returned distributions for as long as claimant has owned them.

Respondent Tim Burkes did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Joan Larsen requested \$8,000.00, representing her original investment.

Respondent E.F. Hutton requested that the claims of claimant be dismissed in their entirety.

Respondent Tim Burkes did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Rule 10302 of the Code of Arbitration Procedure, respondent Tim Burkes, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, notice of the overdue answer and notification of the Arbitrator's identity was effected upon respondent Tim Burkes by certified mail, as evidenced by the signed signature card on file at NASD Regulation, Inc.

Pursuant to the By-laws of NASD Regulation, the arbitrator determined that respondent Tim Burkes had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore bound by the arbitrator's ruling and determinations.

The arbitrator reviewed and considered respondent E.F. Hutton's motion to dismiss pursuant to Rule 10304. The motion was granted.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, W. Bradford Sherman, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Joan Larson on June 5, 1996 and by respondent E.F. Hutton on November 19, 1996. Respondent Tim Burkes did not execute a Submission Agreement as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

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 claimant Joan Larson against respondents E.F. Hutton and Tim Burkes are dismissed in their entirety due to the Statute of Limitations.
2. The \$150.00 filing fee previously deposited by claimant shall be retained by NASD Regulation, Inc.

AFFIRMATION

I, **W. Bradford Sherman**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


W. Bradford Sherman

Date of Decision: May 7, 1997