

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Bernadette V. Rudolph

Claimant

vs.

E.F. Hutton and Company, Inc.
and Jerry William Burch

Respondents

CASE NO. 88-01302

SUMMARY OF ISSUES

Claimant filed this claim with the NASD on April 25, 1988 against E.F. Hutton and Company, Inc. and its account executive Jerry William Burch and alleged unsuitable securities transactions and breach of fiduciary duty. Specifically, Claimant alleged that the securities recommended were unsuitable to her expressed investment objectives; that many of the investments were speculative including investments in two limited partnerships; and that Respondent Burch represented that all such investments were blue chip in nature and secured.

Respondents denied the allegations and maintained that the investments recommended were suitable with Claimant's expressed investment objectives of fixed income with moderate growth in long-term investments; that Claimant's portfolio did not contain speculative investments as alleged, but was comprised of trust funds, unit trusts, government funds, Fanny Mae's, and such stocks as RJR Nabisco Cola Cola, and AT&T; that Burch discussed each and every proposed investment and position completely and in detail with Claimant and often supplied her with research reports and other literature; that Claimant was advised of all factors, including risk factors, pertaining to each and every investment; and that all investments were authorized by Claimant in advance of its purchase. Respondents denied that Burch ever informed Claimant that the recommended investments were either secured and/or guaranteed.

DAMAGES AND RELIEF REQUESTED

Claimant requested general damages representing unrealized losses in her account in the amount of \$45,000.00; punitive damages in an amount equal to the general damages awarded; interest from the date of loss; and costs and reasonable attorney's fees incurred.

Respondents requested dismissal of the claim.

DAMAGES AND RELIEF AWARDED

On September 22, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration

signed by Claimant on March 22, 1988 and by Respondents Shearson Lehman Hutton, Inc. on November 1, 1988 and Jerry William Burch on September 22, 1989. The hearing was held in Los Angeles, California and lasted two sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents are hereby jointly and severally liable for and shall pay to Claimant the sum of Six Thousand and Eighty Five Dollars and Ninety Six Cents (\$6,085.96) calculated as follows:

- a. Actual damages in the amount of \$5,071.64; and
- b. Interest at 10% for the period of September 1987 to September 1989 in the amount of \$1,014.32.

2. Claimant may hereby elect, within 30 days of the service of this award, to tender her shares of Uniprop Income Fund to Respondents for which they will be jointly and severally liable for and shall pay to Claimant the sum of Twelve Thousand and Four Hundred Seventeen Dollars and Zero Cent (\$12,417.00) calculated as follows:

- a. Amount invested of \$10,000.00; and
- b. Interest at 10% for the period of April 1987 to September 1989 in the amount of \$2,417.00.

3. The parties shall each bear their respective costs including attorney's fees.

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure:

- a. The NASD shall retain the \$400.00 filing fee previously deposited by the Claimant;
- b. Respondents are jointly and severally liable for the sum of \$400.00 representing the filing fee and shall reimburse Claimant directly; and
- c. Respondents are further jointly and severally assessed the sum of \$400.00 representing forum fees and shall pay this to the NASD

OTHER ISSUES

The parties stipulated at the hearing to the execution and service of this award in counterpart copies.

9003133

ARBITRATORS CONCURRING

DATE SERVED: 10/17/89

Frank M. Hodgson
Frank M. Hodgson

9003133

ARBITRATORS CONCURRING

DATE SERVED: 10/17/89

Herman R. Friedberg
Herman R. Friedberg

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Elwood A. Crandall
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