

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
:
Marilyn Burris :
:
:
Claimant : CASE 88-01974
: AWARD
vs. :
:
PaineWebber Jackson & Curtis, Inc. :
Smith Barney Harris Upham & Co., Inc. :
Donald Porter :
:
Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 20, 1988, Claimant Marilyn Burris alleged Respondents breached the fiduciary duty owed to her and willfully and knowingly purchased and sold for her account securities of a speculative nature which subjected plaintiff's capital to undue risks contrary to her stated investment goals and objectives and which were unsuitable for her. Claimant further alleged Respondents made numerous purchases and sales of securities in her account without her authority and consent and also sold securities to the Claimant in transactions in which the Respondents acted for their own account. Claimant further alleged the Respondents fraudulently induced the Claimant to open an account by perpetrating upon the Claimant a deceptive and manipulative practice. Respondent Smith Barney Harris Upham & Co. maintained that Claimant was a relatively sophisticated investor who had the means and desire to invest in options and was aware of the risks involved in trading options. Respondent Smith Barney Harris Upham & Co. further maintained that although the Claimant granted discretionary authority to her account executive, trades were often discussed with the Claimant prior to execution and further maintained she received confirmations and account statements which refutes her claim that she did not authorize and was unaware of the activity in her account. Respondents PaineWebber Jackson & Curtis, Inc. and Donald Porter maintained the Claimant was a sophisticated investor with aggressive tendencies and was fully capable of appreciating whatever risks she was undertaking in any particular investment. Respondents PaineWebber Jackson & Curtis, Inc. and Donald Porter further maintained the Claimant had extensive contact with her broker and was supplied with a confirmation of every purchase and sale made in the account as well as monthly account statements.

RELIEF REQUESTED

Claimant requested damages of \$250,000.00 plus punitive damages along with interest, costs, attorney's fees and such other relief as the arbitrators may deem just and proper. Respondent Smith Barney Harris Upham & Co. requested dismissal of claim and that costs be awarded to it. Respondents PaineWebber Jackson & Curtis, Inc. and Donald Porter requested dismissal of claim and that costs be assessed against the Claimant.

AWARD

On December 6, 1989, September 11 and 12, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Marilyn Burris on December 6, 1989, and by Respondent PaineWebber Jackson & Curtis, Inc. on March 24, 1989 and by Respondent Smith Barney Harris Upham & Co. on July 25, 1988 and by Respondent Donald Porter on December 6, 1989. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in New York City, NY and consisted of six (6) hearing 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. The claims by the Claimant Marilyn Burris be and hereby are dismissed in all respects.
2. The parties shall each bear their respective costs including attorney's fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant. In addition, the Claimant Marilyn Burris be and hereby is liable and shall pay to the NASD the sum of \$375.00 to represent forum fees and the Respondent PaineWebber Jackson & Curtis, Inc. be and hereby is liable and shall pay to the NASD the sum of \$1,125.00 to represent forum fees and the Respondent Smith Barney Harris Upham & Co., Inc. be and hereby is liable and shall pay to the NASD the sum of \$1,125.00 to represent forum fees and the Respondent Donald Porter be and hereby is liable and shall pay to the NASD the sum of \$1,125.00 to represent forum fees.

CONCURRING ARBITRATORS

/s/ _____
Howard S. Eilen

/s/ _____
Murray I. Sommer

/s/ _____
John L. Barry, III

Dated: November 27, 1990