

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Mary D. Jaka

88-02695

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.

CASE SUMMARY

In a Statement of Claim filed with the NASD on August 25, 1988, and amended on March 5, 1990, Claimant Mary D. Jaka alleged that Respondent Smith Barney Harris Upham & Co., Inc. engaged in the unauthorized trading of stocks in Claimants non-discretionary account, purchased speculative unsuitable stocks for the account, and breached the fiduciary duty owed to Claimant by Respondent in the handling of the account during the years 1982 and 1983.

In a Statement of Answer filed with the NASD on November 2, 1988, Respondent Smith Barney, Harris Upham & Company, Inc. denied the allegations of wrongdoing, stating confirmations and monthly statements were forwarded on all transactions which Claimant never acted upon and, therefore, Claimant waived her right to bring this claim. Respondent specifically denied that the trades complained of were unauthorized and, furthermore, that the claims were barred by the applicable statutes of limitations and by claimants' failure to mitigate damages by liquidating the securities in March of 1984 when it was first discovered they were in the account.

RELIEF REQUESTED

In the initial Statement of Claim, Claimant requested that an award be entered for \$32,645.00 representing the total loss on the unauthorized shares held in the account and commissions, plus interest and attorneys' fees. In the Amended Statement of Claim, Claimant requested an award be entered against Respondents for losses of \$57,750.00, broker's commissions of \$2,395.00, and accrued interest, less the present value of the stock. In addition, Claimant requested costs, attorneys' fees and punitive damages totaling 3 times the total actual damages.

Respondent Smith Barney requested an award be entered dismissing the Statement of Claim and assessing costs of the proceedings against Claimant.

PRELIMINARY MATTERS

Prior to hearing in this matter, Respondent Smith Barney requested that its Motion to Dismiss based upon the applicable Statute of Limitations be presented to the panel of arbitrators for decision. After review of Respondents' Motion and the Reply presented by Claimant, the arbitration panel met in a pre-hearing conference on July 20, 1990 and denied the Motion To Dismiss.

AWARD

On July 23, 1990, in Houston, Texas during a hearing lasting 3 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 18, 1988 by Claimant Mary D. Jaka. Respondent Smith Barney, Harris Upham & Co., Inc. is an NASD member, was represented by counsel and found to be required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

At the close of evidence in the hearing, Respondent reviewed its Motion to Dismiss based on the applicable statute of limitations. After discussing the motion in executive session, the panel took the motion under advisement.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Smith Barney, Harris & Upham & Co., Inc.'s Motion to Dismiss based on the applicable statute of limitations is hereby denied.

2. Claimant Mary D. Jaka shall execute and transfer all her interest and title to the 4000 shares of C.I Corporation and the 2000 shares of Altos Computer Systems, Inc. to Respondent Smith Barney, Harris Upham & Co., Inc.

3. In return for title to these shares, Respondent Smith Barney Harris Upham & Co., Inc. is liable for and shall pay to Claimant Mary D. Jaka the amount \$53,634.24 plus 6% simple interest per annum from July 22, 1983 until the award is paid.

4. Parties shall each bear their own costs, including attorneys's fees.

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Mary D. Jaka. Respondent Smith Barney, Harris & Upham & Co., Inc. is liable for and shall pay forum fees to the NASD in the amount of \$1,200.00.

Arbitrator(s) Signature

Dated: 13 September 90

/s/ Michael E. McGown
Michael E. McGown, Esq.

Dated: _____

/s/ _____
Raymond Horn, C.P.A.

Dated: _____

/s/ _____
Victor Montalbano

(5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Mary D. Jaka. Respondent Smith Barney, Harris & Upham & Co., Inc. is liable for and shall pay forum fees to the NASD in the amount of \$1,200.00.

Arbitrator(s) Signature

Dated: _____

/S/ _____
Michael E. McGown, Esq.

Dated: _____

/S/ _____
Raymond Horn, C.P.A.

Dated: 9-12-90

/S/ Victor Montalbano
Victor Montalbano

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Mary D. Jaka. Respondent Smith Barney, Harris & Upham & Co., Inc. is liable for and shall pay forum fees to the NASD in the amount of \$1,200.00.

Arbitrator(s) Signature

Dated: _____

/S/

Michael E. McGown, Esq.

Dated: 9/12/90

/S/

Raymond Horn, C.P.A.

Dated: _____

/S/

Victor Montalbano