

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

RUTH J. DUNNAM

88-03202

Name of Respondent(s)

SMITH BARNEY, HARRIS & UPHAM & CO.

CASE SUMMARY

In a Statement of Claim filed with the NASD on October 17, 1988, Claimant Ruth J. Dunnam alleged that Respondent Smith Barney, Harris Upham & Co., Inc. committed breach of contract, negligence, gross-negligence, unsuitability and fraud in Claimant's discretionary stock options account. Specifically, Claimant alleges that Respondent: (1) knowingly and intentionally churned the account to generate commissions; (2) exposed the account to unnecessary speculative risk by trading in options; (3) engaged in unauthorized trading after March of 1980 in violation of express cease trading orders; (4) knowingly and intentionally breached their fiduciary and contractual obligations; and, (5) engaged in unsuitable trading after Respondent independently had determined that such a discretionary options account would be unsuitable for the Claimant.

In a Statement of Answer filed with the NASD on January 17, 1989, Respondent denies any impropriety in the handling of Claimant's account, stating that (1) all trades were confirmed and no objections were made; (2) no demand was made to stop trading until August of 1986; (3) Claimant was a sophisticated trader who was knowledgeable of the activities in her account; and, (4) discretionary authority was given because of Claimant's business traveling schedule and not because of any lack of sophistication.

RELIEF REQUESTED

Claimant requested an award be entered against Respondent in the amount of \$50,000 for losses in account, \$200,000.00 for exemplary damages for fraud, attorneys' fees and costs to be assessed against the Respondent.

Respondent requests that the Statement of Claim be dismissed in all respects and all costs of the proceeding should be assessed against Claimant.

AWARD

On May 23, 24, 29 and 30, 1990, in Houston, Texas during a hearing lasting 8 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 14, 1988 by Claimant, Ruth J. Dunnam, and on January 16, 1989 by David Levy on behalf of Respondent, Smith Barney, Harris Upham & Co., Inc.

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., is liable for and shall pay to Claimant, Ruth J. Dunnam, the amount of \$63,500.00, determined as follows:

- a. \$18,000.00 for the loss in Claimant's account due to the option trading;
- b. Pre-judgment interest of \$5,000.00;
- c. Expert fees of \$5,500.00; and,
- d. Pursuant to the oral stipulation of the parties at the hearing as to the authority of this arbitration panel to award attorneys' fees and punitive damages in this arbitration, the arbitrators have determined that Respondent shall pay to Claimant attorneys' fees of \$25,000.00 and punitive damages of \$10,000.00.

2. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$500.00 filing fee previously deposited with the NASD by the Claimant, Ruth J. Dunnam. Respondent Smith Barney, Harris Upham & Co., Inc. is liable for and shall pay forum fees to the NASD in the amount of \$6000.00.

By the Panel

Dated: September 12, 1990 /S/ Barbara D. Campanelli, Esq.

Dated: September 12, 1990 /S/ William J. Hawkins

I dissent from the award of the majority above on the basis of my judgment as to the insufficiency of the award for actual and punitive damages, as to both of which I would have awarded more.

Dated: September 11, 1990 /S/ Dean J. Capp, Esq.