

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

BARRY G. HUNNEWELL,

Claimant

and

SMITH BARNEY HARRIS UPHAM & CO., INC.
AND LAWRENCE J. CANAVAN,

Respondents

CASE NO. 88-03748

CASE SUMMARY

Barry G. Hunnewell ("Claimant") alleges that Smith Barney Harris Upham & Co., Inc. ("Respondent SBHU") and Lawrence J. Canavan ("Respondent Canavan") (sometimes collectively referred to as "Respondents") engaged in unauthorized trading in Claimant's account during the period from August, 1987 until the end of October, 1987. Further, Claimant alleges common law fraud and deceit, breach of contract, and common law negligent misrepresentation, and violation of Section 410(a)(2) of the Massachusetts Uniform Securities Act, M.G.L. c.110A.

Respondents generally denies each and every allegation set forth in the Statement of Claim. Respondents allege that Claimant authorized and/or ratified all trades, failed to mitigate damages, and that the claims are barred by the doctrine of waiver and estoppel. Respondent further alleges that the alleged lost profit damages are vague and speculative and were not proximately caused by any act or omission by Respondents.

RELIEF REQUESTED

Claimant request damages in the amount of \$480,000.00 plus interest and costs of the proceeding including attorneys' fees and further and other relief as deemed just and equitable.

Respondent requests that the Statement of Claim be dismissed.

AWARD

On March 19 and 20, 1990 in Detroit, Michigan in a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 23, 1988 by Claimant Barry G. Hunnewell on March 1, 1989 by Joan Guggenheimer, Esq. on behalf of Respondent Smith Barney Harris Upham & Co., Incorporated. No Submission Agreement was executed or submitted by Lawrence J. Canavan. However, the arbitrators determined that since Mr. Canavan is a registered representative of a member firm and an answer was filed on his behalf, that Mr. Canavan was deemed to have submitted to the arbitration procedure.

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. The claim based upon suitability and the request for attorneys' fees was voluntarily withdrawn by Barry G. Hunnewell.
2. Barry G. Hunnewell's statement of claim is dismissed against Smith Barney Harris Upham & Co., Inc.
3. Barry G. Hunnewell's statement of claim is dismissed against Lawrence J. Canavan.
4. The claim for interest and consequential damages is denied.
5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee previously deposited with the NASD by the Claimant Barry G. Hunnewell.

By the Panel

Dated: 03/20/90 /S/ Gary M. Saretsky
Presiding Chair

Dated: 03/20/90 /S/ Timothy J. Currier

Dated: 03/20/90 /S/ Norton Stern

Date Served: 05/01/90