

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between/Among

Emma Smith

Claimant

vs.

Gary Curto,  
Equitable Securities of New York, Inc.  
Smith Barney Harris Upham & Co., Inc.  
Levco Securities Corp. and  
David W. Appel, Jr.

Respondents

Case #89-00644  
AWARD

CASE SUMMARY

Claimant, Emma Smith (hereinafter "Claimant") alleged that Respondents, Gary Curto (hereinafter "Curto"), Equitable Securities of New York, Inc. (hereinafter "Equitable Securities"), Smith Barney Harris Upham & Co., Inc. (hereinafter "Smith Barney"), Levco Securities Corp (hereinafter "Levco") and David W. Appel, Jr. (hereinafter "Appel") improperly handled Claimant's account. Claimant alleged that Respondent Curto placed unsuitable investment in Claimant's account that Curto churned Claimant's account, and that Curto conducted unauthorized trades in Claimant's account. Claimant alleged that although she conveyed to Respondent Curto her financial needs and objectives, Curto failed to comply with them. Claimant further alleged that Curto failed to properly file Claimant's tax return causing Claimant to be assessed interests and penalties by the Internal Revenue Service.

Respondent Curto maintained that he discussed with Claimant her investment objectives. Respondent Curto maintained he did not churn her account and that he offered to "look at her taxes, free of charge to offer his services only to the respects of gains and losses from trading effected her returns. Respondent Curto maintained that 10,000 in losses were the fault of Equitable Securities.

Respondent Equitable Securities maintained that it acted prudently and that if the Claimant sustained damages through acts of Respondent Curto that they had no knowledge of that. Respondent Smith Barney alleged that Claimant never opened or attempted to open a securities account at Smith Barney and that Claimant had no business dealings with Smith Barney. Smith Barney maintained that it has done nothing to harm Claimant and that under the doctrine of respondeat superior, and employer can only be liable for acts committed by its agent when such act are within the scope of his employment. Smith Barney maintained any acts allegedly committed by Curto were beyond the scope of his employment.

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Respondent Levco maintained it has no responsibility, obligations or liability to the Claimant for damages, that Respondent Curto was never employed by Levco, and that Curto was never an agent for Levco. Respondent Levco maintained that it is not a proper party Respondent as it nor any of its agents or predecessors-in-interest had any business transactions or dealings with the Claimant. Respondent Appel states that there is no legal grounds to permit the piercing of the corporate veil; therefore, all actions as to him should be dismissed.

Smith Barney asserted a counterclaim against Claimant for Claimant's asserting a frivolous claim against it. Claimant replied that its claim is not frivolous and that Smith Barney failed to supervise Curto.

#### RELIEF REQUESTED

Claimant, requested compensatory damages in the amount of \$56,000.00, punitive damages equal to twice these damages plus interest from September 1987, and costs.

Respondents Curto, Levco, Equitable Securities, Appel and Smith Barney requested that Claimant's claim be dismissed in its entirety. Respondent Equitable Securities requested that if the panel finds any liability as to it that Curto indemnify it for any such judgement. Smith Barney, in addition, requested costs, attorneys' fees and sanctions. In addition, Levco requested that it be dismissed as a Respondent and that it be awarded costs and attorneys' fees. Respondent Appel, in addition, requested summary judgement be granted in his favor.

#### AWARD

On June 6, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant, on March 27, 1989 and by the Respondent Gary Curto on June 13, 1989; by Respondent Equitable Securities of New York, Inc. on February 9, 1990; by Respondent Smith Barney, Harris Upham & Co. Inc., on August 9, 1989; by Respondent Levco Securities Corp., on May 1, 1989 and by Respondent David Appel, Jr. on November 17, 1989. The hearing was held in New York City and consisted of two (2) 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:

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1. That all claims asserted by Claimant against Newbridge Securities, Inc., Jonathan Alan & Co., Inc. and Mitchell Alan Feinglas were settled and were no longer parties in this arbitration.
2. That Respondents Gary Curto, Levco Securities, Equitable Securities of New York, Inc. are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of Fifty-Three Thousand One Hundred And Sixty-Five Dollars And No Cents (\$53,165.00); inclusive of interest.
3. That Respondent David W. Appel, Jr. is liable to the Claimant and shall pay to the Claimant the sum of Three Thousand Fifty-Five Dollars And No Cents (\$3,055.00); inclusive of interest.
4. That Claimant's claim against Respondent Smith Barney is denied in its entirety.
5. That Respondent Smith Barney's counterclaim against the Claimant is dismissed in its entirety.
6. Pursuant to Section 43 of the Code of Arbitration Procedures, Respondents are jointly and severally assessed forum fees in amount of \$1,500.00 payable to the National Association of Securities Dealers, Inc. through its staff counsel.
7. The parties shall each bear their respective costs, including attorneys' fees.
8. 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.

**ARBITRATORS CONCURRING**

/s/

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W. Cullen MacDonald

/s/

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Eugene Bleier

/s/

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Vincent Buchanan

Dated: July 31 1990