

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

: In the Matter of the Arbitration Between :
: :
: Lawrence J. Kaitz :
: Elizabeth N. Kaitz :
: Gerald I. Emerick :
: :
: Claimants : CASE# 89-02441
: vs. :
: :
: Smith Barney Harris Upham Co., Inc. :
: Florette Small :
: :
: Respondents :

Heard before:

Richard W. Vallario, Esq.
George H. Hearn
Emil Spinelli

Public Arbitrator
Public Arbitrator
Industry Arbitrator

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 31, 1989 Claimants Lawrence J. and Elizabeth N. Kaitz and Gerald I. Emerick alleged the Respondents engaged in a course of conduct which deceived and defrauded Claimants in that they made various misrepresentations to the Claimants knowing they were untrue; engaged in a pattern of convincing Claimant Elizabeth N. Kaitz, based on rumor and speculation, to purchase stocks on margin, purchased and sold securities for Claimants' accounts that were unsuitable for the Claimants solely for the purpose of generating commissions and interest income to the Respondents. Claimants further alleged the Respondents were negligent and reckless in the manner of purchase and sale of securities and in the maintenance of Claimants' margin accounts and breached the fiduciary duty owed the Claimants by failing to properly supervise the Respondent Florette Small. Respondents Smith Barney Harris Upham & Co., Inc. and Florette Small maintained the Claimants actively pursued trading on margin and closely monitored their margin balances and rejected the Respondents' suggestion that they reduce their margin balances. Respondents further maintained the Claimant Elizabeth N. Kaitz was a knowledgeable, sophisticated investor, aware of the nature and risk involved in the Claimants' accounts and Claimant Elizabeth N. Kaitz traded her own ideas as well as those of Respondents. Respondents further maintained the Claimants sought aggressive growth with some income and the Claimants are seeking to disavow the trading they directed for years.

RELIEF REQUESTED

Claimants requested damages of approximately \$300,000.00, plus punitive damages of \$1,000,000.00. Respondents requested dismissal of claim and that costs of the proceeding be assessed against the Claimants.

AWARD

On October 25, 1989, January 3, 1991, January 4, 1991, February 7, 1991, February 8, 1991 and March 1, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Lawrence J. and Elizabeth N. Kaitz on August 2, 1989 and by Claimant Gerald J. Emerick on August 8, 1989 and by Respondent Smith Barney Harris Upham & Co., Inc. on January 3, 1991 and by Respondent Florette Small on January 3, 1991. The hearings were conducted at the offices of the National Association of Securities Dealers, Inc. located in New York City, NY and consisted of eleven (11) 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 Respondents Smith Barney Harris Upham Co., Inc. and Florette Small be and hereby are liable jointly and severally and shall pay to the Claimant Gerald I. Emerick the sum of Forty Two Thousand Three Hundred Forty Nine Dollars and No Cents (\$42,349.00), only for interest on debit balance caused by unauthorized margin trading prior to December 1, 1984.
2. All other claims by Claimants Lawrence J. and Elizabeth N. Kaitz and Gerald I. Emerick be and hereby are dismissed in all respects.
3. The parties shall each bear their respective costs, including attorneys' fees.

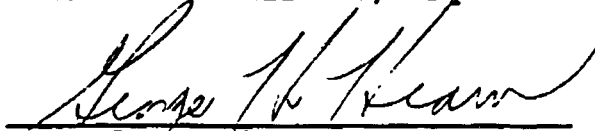
FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the Claimants Lawrence J. and Elizabeth N. Kaitz and Gerald I. Emerick be and hereby are liable jointly and severally and shall pay to the National Association of Securities Dealers, Inc. the sum of \$5,250.00 to represent forum fees and the Respondent Smith Barney Harris Upham Co., Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$6,000.00 to represent forum fees.

ARBITRATORS SIGNATURES



Richard W. Vallario, Esq.



George H. Hearn



Emil Spinelli

Date of Decision: March 4, 1991