

N.A.S.D.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Arthur Bullard, Jr.

CASE #90-01220

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.  
Stephen William Sherman  
George McElveen, III.

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REPORT OF ARBITRATOR

Following the arbitration hearing on May 14, 1991 I have considered the testimony and evidence presented at that proceeding. After careful deliberation, I find as follows:

This cause came on for hearing pursuant to the Code of Arbitration Procedure in Tampa, Florida on May 14, 1991. Claimant Arthur Bullard, Jr. appeared with his counsel, Patrick Davis, Esquire. Respondent Stephen Sherman appeared in his individual capacity and on behalf of Respondent Smith Barney Harris Upham & Co., Inc.. David Levy, Esquire represented Respondents, Smith Barney, Sherman and McElveen. Respondent George McElveen III, through his counsel, waived appearance at the arbitration hearing.

This was a claim alleging unauthorized and unsuitable trading in the account of Claimant Arthur Bullard, Jr. Specifically, Claimant alleged that Respondent Sherman sold out of his account certain GMAC Zero Coupon Bonds contrary to the investment objectives of Claimant. The proceeds of this sale were used to acquire shares in Circle K Corporation upon the urging of Respondent Sherman, which was an unsuitable trade given the investment objectives of Claimant. Claimant further alleged that his account had purchased certain stocks on margin without the authorization of Claimant and contrary to his express directions that his account not be put on margin. Claimant sought damages for these trades, including a demand for rescission of these trades, statutory interest on the monies used to make these trades, refund of the commissions and costs associated with the unauthorized trades, refund of the interest charges for the margin trading in the account of

Claimant and the costs and attorneys fees incurred in pursuing this arbitration.

Respondent denied the allegations of Claimant. Respondents asserted that all trades in the account were fully authorized by Claimant through direct communications between Respondent Sherman and Claimant. The suitability of all trades was considered and discussed with Claimant, according to Respondents. As to the allegations of unauthorized margin trading, Respondent Sherman alleged that the use of margin to acquire certain securities was fully discussed and authorized in communications between Respondent Sherman and Claimant.

After receiving the testimony and evidence presented by all parties, this arbitrator finds in favor of Respondents Smith Barney Harris Upham & Co., Stephen W. Sherman and George McElveen III as to all claims asserted by Claimant Arthur Bullard, Jr. This arbitrator finds that Claimant Arthur Bullard, Jr. has failed to meet his burden of proving the subject trades in his account were unauthorized or unsuitable for his investment objectives. Claimant Arthur Bullard, Jr. has further failed to prove the trading in his account on margin was unauthorized by him.


In this case, the testimony of Claimant and the testimony of Respondents is in direct conflict. As noted by Respondents' counsel, the issues in this case could not be more polarized. There are no shades of gray in comparing the testimony of Claimant with the testimony of Respondents.

It is clear from the testimony of all parties that Claimant is not a "trader" in securities nor one who makes impulsive investment decisions. Claimant clearly took a "long term" outlook in his investments. At the same time, it is equally clear Claimant had a fundamental investment objective of profit-making. While Claimant asserts these trades were unsuitable, the testimony and evidence demonstrates these trades cannot be considered unsuitable nor improper in light of Claimant's overall objective in his investment strategy. Claimant concurred in the recommendations of Respondent Sherman to purchase certain equities. The remaining dispute is whether he authorized those purchases to be made on margin. In the final analysis, the allegations of Claimant can only be sustained by accepting the testimony of Claimant and rejecting the testimony of Respondent Sherman. There is no objective evidence to sustain those allegations. In considering the credibility of the testimony of Claimant in contrast to the testimony of Respondent Sherman, this arbitrator must make certain observations. First, the fundamental question remains why Respondent Sherman would engage in unauthorized trading and fraudulently misrepresent the nature of the activity in Claimant's account. The trading activity in this account was minimal, at best. Respondents did not stand to gain any significant commissions or generate substantial trading volume so as to induce Respondents to carry out the activities alleged by Claimant. On the other hand, one must consider the testimony of Claimant himself. It is undisputed that the account summaries sent to Claimant on a monthly basis clearly showed the use of margin trading

in his account and identified the specific investments being made in that account. The testimony of Claimant that he simply did not realize what the statements meant or that he was told by Respondent Sherman to disregard the information on his account statements, is not credible testimony. It should be noted that Claimant obtained a Bachelor's Degree in Political Science with a minor in Business. Claimant has an M.B.A. degree and attend two and a half years of law school. He owns a real estate business and has been engaged in marketing at his primary place of employment, the St. Petersburg Times. He has maintained accounts at five (5) different brokerage firms and has invested and traded in those accounts at least since 1982. The educational background of Claimant, his experience in business matters and his previous investment experience at various brokerage houses refutes any suggestion he was unaware of the true nature of the trading activity in his account or was somehow "fooled" by Respondent Sherman. Instead, it appears Claimant regrets certain investment decisions and wants to "start over". With the benefit of hindsight, many investors would like to do so. However, in this case the responsibility for those investment decisions must fall squarely on the shoulders of Claimant.

ACCORDINGLY, I find in favor of Respondents Smith Barney Harris Upham & Co., Inc., Stephen W. Sherman and George McElveen III as to all allegations contained in the Statement of Claim filed by Claimant. I assess forum fees against Claimant Arthur Bullard, Jr. in the amount of Six Hundred Dollars (\$600.00). Each party is to otherwise bear its own costs and attorney fees.

Arbitrator's Signature

  
Guy E. Burnette, Jr., Esq.

Dated: \_\_\_\_\_

July 8, 1991

AJF:CDW:LC53A