

N.A.S.D. STIPULATED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Marie C. Ludwick, as Trustee of the)
Marie C. Ludwick Revocable Living)
Trust, Dated July 27, 1983)

Case No. 90-01289

Name of Respondent(s))

Smith Barney Harris Upham & Co, Inc.)
Leslie Peterson)
James A. Strainer)
Drexel Burnham Lambert, Inc.)

REPRESENTATION

For Claimant, Marie C. Ludwick, as Trustee of the Marie C. Ludwick Revocable Living Trust ("Ludwick"): Robert Wayne Pearce, Esq. of Lerner & Pearce, P.A.

For Respondent, James A. Strainer ("Strainer"): Ronald Shindler, Esq. of Fowler, White, Burnett, Hurley, et al.

For Respondent, Drexel Burnham Lambert, Inc. ("Drexel"): Karen M. Cullen, Esq. of Drexel.

CASE INFORMATION

Statement of Claim filed: May 7, 1990. Claimant's Submission Agreement signed: April 27, 1990.

Respondents, Strainer and Drexel's, Statement of Answer filed: February 27, 1992. Respondent's Submission Agreement signed: March 17, 1992 by Strainer and not signed by Drexel.

Respondents, Smith Barney, Harris Upham & Co., Inc ("SBHU") and Leslie C. Peterson ("Peterson"), were removed as parties as a result of settlements prior to hearing.

HEARING INFORMATION

On March 17 and 18, 1992, in Fort Lauderdale, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimant alleged that she was inexperienced and unsophisticated in securities matters; that her primary investment objective was preservation of capital and tax free income; that following her husband's death, Respondents made misrepresentations of and omitted to state material facts; recommended and effected transactions in real estate limited partnerships, common stocks, CDs, growth funds, and junk bond funds which were unsuitable for Claimant; recommended and effected trades in and out of same quality mutual funds for the purpose of generating commissions; obtained control over Claimant's investments; made unauthorized trades; and, churned the account. Respondents' actions constituted violation of Section 517.301, Florida Statute; Sections 812.014 and 772.10, Florida Statutes (Civil Theft); fraud; negligence; breach of contract; and, Section 10(b) of the 1934 Exchange Act.

Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of failure to state a claim; sophistication and assumption of risk; losses caused by market conditions; authorization and approval; bar by ratification, waiver, estoppel and laches; losses caused by Claimant's negligence; no breach of duty; Claimant received prospectuses; no reasonable reliance; Claimant was fully informed of all risks and status of her investments; bar by statute of limitations; and, failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$750,000.00, punitive damages of \$2,250,000.00, interest, attorney's fees, costs, treble damages and other relief.

Respondents requested dismissal, costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing of this matter, Claimant settled her claims with SBHU and Peterson and those Respondents were removed as parties to this case. This Panel did not consider any claims against those removed parties in reaching the decision in this Award.

AWARD

After considering the pleadings, and reviewing the attached Stipulations for Entry of Arbitration Award, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

The undersigned arbitrators hereby consent to the attached Stipulations for Entry of Arbitration Award, executed by the Claimant and by Respondents, Drexel and Strainer, and incorporate said Stipulations by reference into this Award.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (three sessions x \$1,000.00). Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$500.00 payable to the National Association of Securities Dealers, Inc. Respondents, Drexel and Strainer, are hereby assessed \$1,500.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures


Mark C. Perry, Esq.

Public


Robert S. Natiss

Industry


Samuel Morris, Esq.

Public

Date of Decision: April 13, 1992