

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

A. Kendell Oulie

Claimant

**V5.**

Smith Barney, Harris Upham & Co., Inc.  
Frank G. Zarb

Respondent

CASE 90-02150  
AWARD

### CASE SUMMARY

Pro Se Claimant, A. Kendell Oulie, in a claim filed with the National Association of Securities Dealers, Inc. on August 7, 1990, alleged that Respondent Smith Barney, Harris Upham & Co., Inc., Frank G. Zarb, CEO, in their Beverly Hills, CA office, sold five hundred (500) shares of Bankamerica common stock, lost the stock certificates sent to them by Claimant, replaced the stock by buying it in the open market without giving Claimant a reasonable opportunity to supply other stock he owned, thereby incurring commission charges and a higher replacement cost.

He states that Respondent subsequently took funds from Claimant's account held in Smith Barney's Los Angeles office to pay the disputed debit balance in the Beverly Hills account and has refused to release one thousand (1,000) shares of Claimant's stock in the Los Angeles office. Claimant alleged extreme negligence and arbitrary handling of his accounts.

Claimant dismissed originally named Respondents, Bruce Brereton and R. Daniel Selak.

Respondents, by their counsel Linda R. Alpert, New York, NY, maintained that Claimant was aware that he had a duty to deliver the stock to Smith Barney by the settlement date. They state that Claimant failed to do this and that at least one full day before the buy-in, a mailgram was sent to Claimant advising him of the imminent buy-in of five hundred (500) shares of Bank America Corp., giving him time to deliver other certificates in place of the missing ones. In the interest of resolving this matter, Respondent requests dismissal of the claim against Frank G. Zarb.

1. That the Respondent Smith Barney, Harris Upham & Co., Inc. is liable and shall pay to the Claimant A. Kendell Oulie the sum of Five Hundred Dollars (\$500).
2. Any debit balance in Claimant's Smith Barney, Harris Upham & Co., Inc. account, said debit balance having been created as a result of the transactions complained of, is to be adjusted to reflect a zero balance due.
3. To the extent, if any, that Claimant's account is locked or blocked, Claimant is to be given immediate, unrestricted access to said account.
4. If not already in Claimant's possession, Respondent Smith Barney, Harris Upham & Co., Inc. shall deliver one thousand (1,000) shares of Gulf States Utilities common stock to A. Kendell Oulie.
5. The Counter Claim asserted by Respondent Smith Barney, Harris Upham & Co., Inc. and the claim against Frank G. Zarb be, and hereby are, dismissed in their entirety.
6. The Five Hundred Seventy-Five Dollar (\$575) Counter Claim fee previously deposited with the National Association of Securities Dealers, Inc. by the Respondents shall be retained by the NASD, Inc.
7. The Fifty Dollar (\$50) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and is assessed against Smith Barney, Harris Upham & Co., Inc. who shall pay Fifty Dollars (\$50) to A. Kendell Oulie.

Respondent indicates that it has released the lien on the stock in the Los Angeles account and journaled the debit back into the Beverly Hills account.

Smith Barney, Harris Upham & Co., Inc. issue a Counterclaim for the debit balance in the account of A. Kendell Oulie.

Claimant replied that Respondent's are responsible for his losses as detailed in the Claim, rebuts the Statement of Answer and re-asserts his damage requests.

Respondents reply that they reiterate their objection to Mr. Zarb as a Respondent because he has no personal knowledge of the case and request his dismissal. They clarify various points in their Statement of Answer and in Mr. Oulie's reply and confirm their Counterclaim.

Claimant submitted an additional reply as did Smith Barney.

#### RELIEF REQUESTED

Claimant requests damages of Two Thousand Two Hundred Seventy-Three Dollars and Two Cents (\$2,273.02), cancellation of the unauthorized debit balance of One Thousand Seven Hundred Eighty-Five Dollars and Fifty-Two Cents (\$1,785.52), immediate unlocking of his Los Angeles account and delivery of his one thousand (1,000) shares of Gulf States Utilities common stock.

Respondent Smith Barney Harris Upham & Co., Inc. requests that the Claim be dismissed with prejudice and asserts a Counterclaim for One Thousand Seven Hundred Eighty-Five Dollars and Eighty-Two Cents (\$1,785.82) plus interest from September 8, 1989 plus costs and NASD fees.

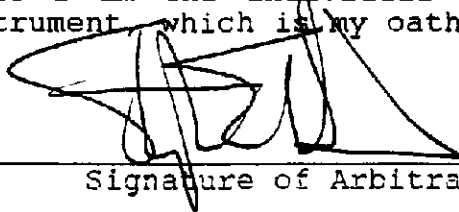
#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stephen E. Haberfeld, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 23, 1990 and by the Respondent Smith Barney, Harris Upham & Co., Inc. on December 18, 1990 but not by Frank G. Zarb as required by Section 13(d) of the Code of Arbitration Procedure;

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

AFFIRMATION

I, **STEPHEN E. HABERFELD, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument which is my oath and award.

  
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Signature of Arbitrator

DATED: 10-22-91