

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Frances M. Epler, Trustee for Frances  
M. Epler Trust

90-03390

Name of Respondents

Smith Barney Harris Upham & Co., Inc.  
John Solotko

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REPRESENTATION

For Claimant, Frances M. Epler Trust ("Claimant"): Nodine Miller and Jack L. Stewart of Luper, Wolinetz, Sheriff & Neidenthal.

For Respondent, Smith Barney Harris Upham & Co., Inc. ("Smith Barney"): Paul K. Barenholtz, Vice President, Law Department of Smith Barney.

Respondent, John J. Solotko ("Solotko") represented himself.

CASE INFORMATION

Statement of Claim filed: November 29, 1990.

Claimant's Submission Agreement signed on: November 26, 1990.

Statement of Answer filed by Respondent, Smith Barney on: February 25, 1991.

Respondent, Smith Barney's Submission Agreement signed on: February 25, 1991.

Respondent, Solotko's Submission Agreement was improperly executed.

HEARING INFORMATION

Hearing Dates/Sessions: October 1, 1991, two sessions  
October 2, 1991, two sessions  
October 30, 1991, two sessions  
October 31, 1991, three sessions

Hearing Location: Columbus Bar Association, Columbus, Ohio.

CASE SUMMARY

Claimant alleged that, as Trustee, she opened an investment account with Respondents in 1982, at which time she was seventy (70) years of age, and that she advised Respondent John Solotko of her investment objectives, specifically her need for conservative, liquid investments, preferably not equities, which would generate a steady income stream. Claimant further alleged that beginning in 1982 and for approximately six (6) years thereafter, Respondents invested a total of \$745,580.00 of her assets in nineteen (19) limited partnerships. Claimant further alleged that such investments were unsuitable and contrary to her stated investment objectives inasmuch as they were illiquid, failed to provide a steady income stream, and were subject to significant secondary market price erosion. Claimant's request for relief included demands for rescission of all limited partnership purchases, interest from the date of each such investment, a return of all commissions paid, attorneys fees, and punitive damages.

Respondents maintained that all investments made in Claimant's account were suitable and consistent with Claimant's expressed investment objectives. Respondents further contended that Claimant did not express a desire that her investments be liquid, and that Claimant was in possession of information by which she was or should have been aware of the relative lack of liquidity of the limited partnership investments. Respondents maintained that Claimant's investments were independently monitored by other persons designated by Claimant. Respondents also maintained that some or all of Claimant's claims were barred by applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested: (1) Rescission of the nineteen (19) limited partnership investments and a return of her capital, less distributions. (2) Interest at the rate of ten percent (10%) per annum from the date each investment was made. (3) A return of all commission paid on the purchase of limited partnership investments. (4) Costs, including reasonable attorneys' fees, and costs of these proceedings. (5) Punitive damages in the amount of \$50,000.00.

Respondents requested that Claimant's claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

That the parties have agreed that the award in this matter may be executed in counterpart copies or that a handwritten, signed award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of Fifty Seven Thousand and 00/100 Dollars (\$57,000.00); interest on such amount at the rate of ten percent (10%) simple interest per annum is awarded from the date of the Award.
2. Claimant's claim for punitive damages is denied in its entirety.
3. That each party shall bear their own costs, including attorney fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. That Claimant's hearing session deposit of \$1000.00 shall be retained to cover the costs of the first hearing session.
2. That forum fees for the remaining eight (8) sessions at a cost of \$1000.00 each are equally assessed against Smith Barney and Solotko, so that the amount due from Smith Barney is \$4000.00 and the amount due from Solotko as forum fees is \$4000.00.

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

ARBITRATION PANEL

Name

Public/Industry

  
Stephen Cartwright

Industry Arbitrator