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NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
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In the Matter of the Arbitration Between)

Name of Claimant(s))

Jerry Kenney)

Name of Respondent(s))

Smith Barney Harris Upham & Co., Inc.)
Mark R. Sorensen)

Case No . 91-00400

REPRESENTATION

Claimant, Jerry Kenney ("Kenney"): was pro se.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and Mark Sorensen ("Sorensen"): David Levy, Esq. of Smith Barney.

CASE INFORMATION

Statement of Claim filed: February 6, 1991. Claimant's Submission Agreement signed: January 29, 1991.

Respondents' Statement of Answer filed: June 28, 1991. Respondents' Submission Agreements signed by Sorensen on November 6, 1991, and by David Levy on behalf of Smith Barney on June 27, 1991.

HEARING INFORMATION

On November 20, 1991, in Tampa, Florida, a hearing lasting two sessions was conducted in person and on November 22, 1991 a hearing lasting one session was conducted via telephone conference call for a total of three sessions.

CASE SUMMARY

Claimant alleged that Respondents were liable for: breach of fiduciary duty; negligence and gross negligence; negligent supervision; common law fraud; and, violations of Florida and Federal Securities Laws. Claimant alleged that Sorensen misrepresented the safety of investing in options and that such investments were unsuitable for Claimant.

Respondents denied all allegations of wrongdoing and alleged that the recommendations were made in good faith; Claimant was advised of all risks involved; and Claimant's financial objectives included taking above average market risk.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,000.00.

Respondents requested dismissal of the claim plus costs.

AWARD

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

1. Respondents, Smith Barney and Sorensen, are found liable jointly and severally for breach of fiduciary duty, and shall pay to the Claimant the amount of \$2,025.00, plus interest at the legal rate of 12% per annum (from January 16, 1990 to March 11, 1992) in the amount of \$521.95, for a total due to the Claimant of \$2,546.95.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$600.00 (three sessions x \$200.00 per session). Respondents, Smith Barney and Sorensen are hereby assessed \$600.00, jointly and severally, \$200.00 of which shall be paid directly to the Claimant, and \$400.00 of which shall be paid to the National Association of Securities Dealers, Inc. Additionally, Respondents, Smith Barney and Sorensen are hereby assessed and shall pay directly to Claimant the \$75 filing fee previously deposited by Claimant. The NASD shall retain the \$275.00 previously deposited by Claimant in partial satisfaction of such fees.

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

Arbitrator's Signature


John P. Cullen, Esq.

Date of Decision: 3/18/92