

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Catherine Grimes

No. 91-01910

Name of Respondents

Smith Barney, Harris, Upham & Co., Inc.  
George Owen

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**REPRESENTATION OF PARTIES**

For Claimant: Kenneth B. McClain, Esq. and James M. Ziegler, Esq. of Humphrey, Farrington & McClain, P.C., Independence, Missouri.

For Respondents: Alejandro Schweb, Esq., Vice President, Law Department, Smith Barney, Harris, Upham & Co., Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed: June 19, 1991.

Claimants' Submission Agreement signed on: June 13, 1991.

Joint Statement of Answer filed by Respondents, Smith Barney, Harris, Upham & Co., Inc. and George Owen on: August 7, 1991.

Respondent Smith Barney, Harris, Upham & Co., Inc.'s Submission Agreement signed on: August 7, 1991.

Respondent George Owen's Submission Agreement signed on: July 8, 1991.

### HEARING INFORMATION

Hearing dates: December 22, 1992. Two (2) sessions.  
February 12, 1993. Three (3) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimant, Catherine Grimes ("Claimant") alleged federal securities fraud, breach of fiduciary duty, violations of R.S.Mo. 409.101 et seq., excessive trading, common law fraud, and negligence on the part of Respondents Smith Barney, Harris, Upham & Co., Inc. ("SB") and George Owen ("Owen"). The allegations arose out of activity, in Claimant's account, in the securities more fully enumerated in the attachment to the Statement of Claim. Claimant stated that on or about September 19, 1989, Claimant opened two accounts at SB which Owen had managed. Claimant alleged that she had told Owen that she was an unsophisticated investor, that the money deposited with SB constituted her net worth, that she wanted to invest conservatively, and the money was for her daughter's benefit and future education. Claimant also alleged that she had specifically informed Owen that she did not want to trade on margin. Claimant further alleged that between October of 1989, and May of 1990, Owen had engaged in aggressive trading, and that many of the trades had been on margin. Moreover, Claimant alleged that she had no knowledge of the results of the trading in her accounts except by reports from Owen, and that Owen had continually led Claimant to believe she had been making a profit. Claimant stated that on or about May 11, 1990, Owen had notified Claimant that he was terminating his employment at SB, and also stated that Owen had informed her that her profits had been "illusory". Lastly, Claimant asserted that it was not until after Owen had left SB that she had first discovered she had been losing money.

In their joint Answer, Respondents SB and Owen denied each and every allegation, including Claimant's alleged investment objectives, contained in the Statement of Claim. SB and Owen asserted that Claimant's frequent cash withdrawals were inconsistent with her alleged intent to preserve her capital. In addition, SB and Owen asserted the following affirmative defenses:

1. The Statement of Claim failed to state a claim upon which relief can be granted.
2. Claimant's transactions were appropriately entered and confirmed in accordance with industry, legal and regulatory requirements.
3. Claimant is barred from recovery because she authorized, approved and/or ratified all transactions complained of.
4. Claimant is barred from recovery because she failed to timely complain.

5. Claimant is barred from recovery by the applicable statutes of limitations.
6. Claimant is barred from recovery by the doctrines of laches, waiver and estoppel.
7. Any losses allegedly sustained by Claimant were due to her own decision to buy, hold or sell the securities complained of.
8. Any losses allegedly sustained by Claimant were caused by her failure to mitigate her losses.
9. Any losses allegedly sustained by Claimant were caused by the sole actions and/or negligence of Claimant.
10. Any losses allegedly were caused by market forces outside the control of Respondents.
11. Punitive damages are unwarranted under the law and facts of this case and are not recoverable here.

#### **RELIEF REQUESTED**

In Count I, Claimant requested an award of actual damages of \$50,000.00, interest at the statutory rate, her costs and expenses incurred, for punitive damages in the amount of \$100,000.00, and for such further relief as is just and proper.

In Count II, Claimant requested an award of actual damages in the amount of \$50,000.00 and interest thereon at the statutory rate, for punitive damages in the amount of \$100,000.00, for costs and expenses incurred, for attorneys' fees incurred, and for such further relief as is just and proper.

In Count III, Claimant requested an award of \$50,000.00 actual damages, together with interest thereon from and after the date of purchase, for her costs herein expended, for reasonable attorneys' fees, for punitive damages in the amount of \$100,000.00, and for such other and further relief as is just and proper.

In Count IV, Claimant requested an award of \$50,000.00 actual damages, plus interest, for punitive damages in the amount of \$100,000.00, and for such other relief as is just and proper.

In Count V, Claimant requested an award in the amount of \$50,000.00 actual damages, together

with interest thereon from and after the date of purchase, for her costs herein expended, for punitive damages in the amount of \$100,000.00, and for such other and further relief as is just and proper.

SB and Owen requested that the Statement of Claim be dismissed and that costs be assessed against Claimant.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Smith Barney, Harris, Upham & Co., Inc. and George Owen, are jointly and severally liable for, and shall pay to Claimant, Catherine Grimes, the sum of \$50,000.00 as satisfaction of her claims herein.
2. Claimant, Catherine Grime's claim for punitive damages is denied and dismissed with prejudice.

### OTHER COSTS

3. Each party shall bear their own costs of this arbitration, including attorneys' fees, except as set forth more fully below.
4. Respondents, Smith Barney, Harris, Upham & Co., Inc. and George Owen, are jointly and severally liable for, and shall pay to Claimant, Catherine Grimes, the sum of 950.00 as reimbursement of her costs in filing this arbitration.

### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

5 hearing sessions X \$750.00 = \$3,750.00

Less:

Hearing Deposit by Claimant	<u>750.00</u>
Balance due	\$3,000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$3,000.00 are assessed jointly and severally against the Respondents.

Pursuant to Sections 43(c) and 30(b) of the Code of Arbitration Procedure, the NASD shall retain the postponement fee in the amount of \$750.00 previously paid to the NASD by the Respondents.

Pursuant to Section 43(c) of the Code of arbitration procedure, the NASD shall refund the postponement fee in the amount of \$650.00 previously paid to the NASD by the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

### CONCURRING ARBITRATORS

Dated:

March 2, 1993

/s/Mark D. Wasserstrom  
Mark D. Wasserstrom  
Presiding Chair  
Public Arbitrator

March 2, 1993

/s/Alan D. Roskam  
Alan D. Roskam  
Public Arbitrator

March 4, 1993

/s/Frank A. Toplikar  
Frank A. Toplikar  
Industry Arbitrator

Date of Service by the NASD: March 4, 1993