

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Rosanna Degnan

91-03370

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.

REPRESENTATION

For Claimant: Michael J. Sheehan, Esq. of Sheehan, Cappiello, Stein & Gordon in Concord, New Hampshire.

For Respondent: David Levy, Esq. of Smith Barney, Harris Upham & Co., Inc. in New York City.

CASE INFORMATION

Statement of Claim filed: October 25, 1991.

Claimant's Submission Agreement signed on: October 11, 1991.

Statement of Answer filed by Respondent on: December 31, 1991.

Respondent's Submission Agreement signed on: December 27, 1991.

HEARING INFORMATION

Hearing Date/Sessions: July 9, 1992/one session

Hearing Location: Boston, Massachusetts

CASE SUMMARY

Claimant Rosanna M. Degnan alleged that Respondent Smith Barney, Harris Upham & Co., Inc. was negligent in the hiring and supervision of her broker and nephew, William J. Degnan, when he recommended that she sell her shares of Sears Roebuck & Co., Inc. stock and purchase a \$40,000.00 bond. When she attempted to collect the monies due her when the bond became due, Claimant alleged that she never received the money but received personal checks from her broker that were returned "insufficient funds" or "account closed." Respondent Smith Barney, Harris Upham & Co., Inc. maintained that nothing in

William J. Degnan's publicly available history when he was hired or anything during his tenure at Smith Barney would have led them to anticipate that he would embezzle Claimant's money. Respondent also maintained that Mr. Degnan's employment with Smith Barney terminated weeks before he allegedly absconded with Claimant's check, and Smith Barney could not be responsible for his actions and Claimant's loss.

#### RELIEF REQUESTED

Claimant requested actual damages of \$38,794.00 plus interest, costs, attorneys' fees and unspecified punitive damages. Respondent requested that the claims of the Claimant be dismissed and requested that all costs of the proceedings be borne by the Claimant.

#### OTHER ISSUES CONSIDERED & DECIDED

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(1) Respondent Smith Barney, Harris Upham & Co., Inc. is liable and shall pay to the Claimant Rosanna M. Degnan the sum of Thirty Eight Thousand Seven Hundred Ninety Four Dollars and No Cents (\$38,794.00) plus interest of Five Thousand Four Hundred Thirty One Dollars and Sixteen Cents (\$5,431.16).

(2) The Claimant's claim for punitive damages is denied.

#### OTHER COSTS

(1) The parties shall each bear their respective costs, including attorneys' fees.

#### FORUM FEES

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

(1) The NASD, Inc. shall retain the \$400.00 hearing session deposit previously deposited by the Claimant.

Concurring Arbitrators' Signatures

David B. Salzman  
David B. Salzman, Esq. (chairperson)

Public Arbitrator

Robert Volk, Esq.

Public Arbitrator

Kenneth G. DeWitt

Industry Arbitrator

Dated: July 24, 1992

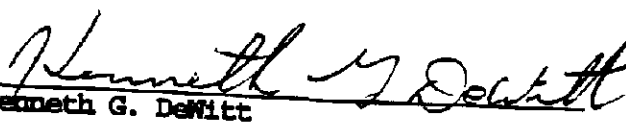
Concurring Arbitrators' Signatures

David B. Salzman, Esq. (chairperson)

Public Arbitrator

Robert Volk, Esq.

Public Arbitrator

  
Kenneth G. DeWitt

Industry Arbitrator

Executed on:

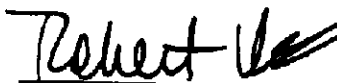
~~Date of~~ July 20, 1992

Date of Decision: July 24, 1992

Concurring Arbitrators' Signatures

David B. Salzman, Esq. (chairperson)

Public Arbitrator

  
Robert Volk, Esq.

Public Arbitrator

Kenneth G. DeWitt

Industry Arbitrator

Dated: July 24, 1992