

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Robert A. Cergol :

Claimant :

vs. :

Smith Barney, Harris Upham & Co., Inc. :
James Pomfret :Respondents :
-----CASE #91-03626
AWARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 19, 1991, Claimant Robert A. Cergol who appeared Pro Se, alleged that in May 1987 he established an IRA account and trading account with Respondent James Pomfret, an account executive with Respondent Smith Barney, Harris Upham & Co., Inc. whereby Claimant rolled over approximately \$10,000.00 into the IRA account. Claimant further alleged that in February 1989 Respondent James Pomfret strongly encouraged him to purchase 500 shares of Jiffy Lube at \$6.00 per share by misrepresenting its future value. Claimant contended that shortly thereafter when Jiffy Lube stock price had fallen to \$4.00 per share, Respondent James Pomfret solicited him to purchase another 500 shares of Jiffy Lube by once again misrepresenting its future value. Claimant further contended that on July 27, 1989 Respondent James Pomfret sold his 1,000 shares of Jiffy Lube at \$2.67 per share without his knowledge or consent. Claimant asserted that he contacted Respondent James Pomfret to notify him of the error, at which time, Respondent James Pomfret implied that he had done Claimant a favor by saving him from a potentially bigger loss. Claimant further asserted that within a six month period, Respondent James Pomfret made recommendations of various investments for his accounts and made substantial commissions from these transactions. Claimant argued that Respondent James Pomfret's inappropriate handling and churning of his accounts, in addition to Respondent's Smith Barney, Harris Upham & Co., Inc. failure to supervise Respondent James Pomfret, caused Claimant to incur losses.

Respondents, Smith Barney, Harris Upham & Co., Inc. and James Pomfret by and through their in-house counsel Linda R. Alpert, Esq., maintained that in April 1987 Claimant Robert A. Cergol

opened an individual account with account executive Respondent James Pomfret and subsequently, in May 1987 Claimant opened an IRA account. Respondents further maintained that in 1987, Claimant had a total of four transactions in his two accounts and in 1988, there were no commission generated transactions, however, in 1989 Claimant expressed an interest in being more aggressive in his investing and trades in the IRA account consisted of three sales and three purchases whereby each of the trades resulted in a profit. Respondents contended that in February 1989 Claimant bought 500 shares of Jiffy Lube at \$6.00 per share and on June 6, 1989, Claimant bought an additional 500 shares at 4.4375 to average down his cost basis. Respondents further contended that they deny that Respondent James Pomfret's sale of Jiffy Lube on July 27 was without authorization because he had received specific directions from Claimant to sell the shares if the stock was going to drop severely, at which time, Respondent James Pomfret received news that would reduce Jiffy Lubes book value and after trying to reach Claimant, Respondent placed an order to sell the shares. Respondents asserted that Claimant is barred from recovery because he authorized, approved all transactions complained of and any losses allegedly sustained by Claimant were due to his own decision to buy, hold or sell the securities complained of.

RELIEF REQUESTED

Claimant, Robert A. Cergol requested \$4,366.39 in actual damages.

Respondents, Smith Barney, Harris Upham & Co., Inc. and James Pomfret requested the claim be dismissed and costs be assessed against the Claimant.

AWARD

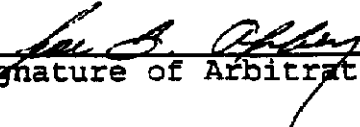
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joe B. Abbey, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 14, 1991, by the Respondent, James Pomfret on December 24, 1991 and by the Respondent, Smith Barney, Harris Upham & Co., Inc. on January 22, 1992.

And, 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:

1. The claims of Claimant Robert A. Cergol against Respondents Smith Barney, Harris Upham & Co., Inc. and James Pomfret are dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Robert A. Cergol shall be retained by the NASD, Inc.

AFFIRMATION

I, JOE B. ABBEY, 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.



Signature of Arbitrator

DATE OF DECISION: August 17, 1992