

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Cathy E. Allin-Cruce

and

91-03948

Name of Respondents

Tara Schuchmann

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**REPRESENTATION OF PARTIES**

Claimant Cathy E. Allin-Cruce was represented by Thomas M. Bradshaw, Esq. of Hoskins, King, McGannon & Hahn, Kansas City, Missouri.

Respondent Tara Schuchmann was represented by Christopher M. Weil, Esq., of Weil & Petrocchi, Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 13, 1991. Submission Agreement of Claimant Cathy E. Allin-Cruce was signed on November 25, 1991.

Motion to Decline Jurisdiction, To Abate and Statement of Answer of Respondent Tara Schuchmann was filed on or about April 2, 1992.

**HEARING INFORMATION**

A pre-hearing conference was held on Wednesday, September 23, 1992 for one (1) session presided over by P. Michael Armstrong, Esq.

The hearing was held on Monday, October 26, 1992 for two (2) sessions, Tuesday, October 27, 1992 for two (2) sessions, Wednesday, October 28, 1992 for two (2) sessions, Thursday, November 19, 1992 for three (3) sessions, Friday, November 20, 1992 for three (3) sessions, Saturday, November 21, 1992 for three (3) sessions, Sunday, November 22, 1992 for three (3) sessions, Monday, January 11, 1993 for two (2) sessions, and Tuesday, January 12, 1993 for three (3) sessions in Dallas, Texas for a total of twenty three (23) sessions and one (1) pre-hearing session.

### **CASE SUMMARY**

Claimant alleged that Respondent Tara Schuchmann ("Respondent") made an unauthorized purchase of a total of 150,000 shares of Ameriwest stock. Claimant further alleged that Respondent made an unauthorized wire transfer of funds from her account. Claimant alleged that these actions constitute breach of contract, breach of fiduciary duty, and fraudulent concealment.

In her Answer to the statement of claim, Respondent stated that the transactions in question were made with the explicit oral authorization and direction of the Claimant. Respondent also asserted the following affirmative defenses: the claims are barred by the applicable statutes of limitations; laches; waiver; estoppel; claimant is not entitled to recover because the basis of the claims are the result of action in concert with James Cruce and others, which actions were fraudulent and illegal; and assumption of the risk.

### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in the amount of \$86,130.97, punitive damages in the amount of \$1,000,000.00 and such other and further relief as the panel deems appropriate.

Respondent requested that the claimant take nothing from her Statement of Claim and that she have her costs expended herein and for such other relief she may be entitled.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Tara Schuchmann did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

### **AWARD**

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

1. Respondent Tara Schuchmann shall be and hereby is liable for and shall pay to the Claimant Cathy Allin-Cruce the sum of \$10.00 (ten dollars).

2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the N.A.S.D. the additional sum of \$10,650.00 and Respondent shall pay to the N.A.S.D. the additional sum of \$11,650.00 as forum fees. Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees in the amount of \$1,000.00 previously deposited with the NASD by the Respondent Tara Schuchmann. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ P. Michael Armstrong, Esq.  
P. Michael Armstrong, Esq.  
Public Arbitrator, Presiding Chair

March 5, 1993

s/ Gerald McEvoy  
Gerard McEvoy  
Public Arbitrator

March 8, 1993

s/ Kenneth D. Bingham  
Kenneth D. Bingham  
Industry Arbitrator

March 8, 1993