

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patty J. Donatelli

Case No. 92-00419

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Frederick G. McKeel
Timothy R. Spang

REPRESENTATION

For Claimant, Patty Donatelli ("Donatelli"): Kalju Nekvasil of Goodman and Nekvasil, P.A..

For Respondents, Smith Barney, Harries Upham & Co. Inc. ("Smith Barney"), Frederick McKeel ("McKeel") and Timothy Spang ("Spang"): David Levy of Smith Barney Harris Upham & Co., Inc.

CASE INFORMATION

Statement of Claim filed: February 4, 1992.

Claimant's Submission Agreement signed on: January 28, 1992.

Respondents' joint Statement of Answer filed: April 9, 1992.

Respondent' Smith Barney's, Submission Agreement signed: April 7, 1992 by David Levy on behalf of the firm.

Respondent, McKeel's Submission Agreement signed: February 25, 1992.

HEARING INFORMATION

Pre-Hearing Conferences were held on February 11 and March 16, 1993 with arbitrators.

Hearings lasting thirteen (13) sessions were conducted in Tampa, Florida on April 27, 28, 29, 30 and May 18 and 19, 1993.

CASE SUMMARY

Claimant, a retired school teacher, alleged that when she opened her options account at Smith Barney in June of 1986 she specifically told Respondent, Spang, that she did not want any index options transactions effected in her account and that Spang promised not to do so. Claimant alleged that despite Spang's promise he executed twenty two (22) opening index options transactions in her account between December of 1986 and August of 1987. Claimant maintained that the index options transactions at issue were inconsistent with her investment objectives, financial situation and needs and therefore, were unsuitable for her account. Claimant alleged that Respondents' actions constituted the following: Violation of Florida Securities Act; Breach of Contract; Common Law Fraud; Breach of Fiduciary Duty; Negligence and Gross Negligence; Civil Theft; Violation of Florida RICO Act; Violation of Federal RICO Act;

Respondents, denied all allegations of wrongdoing and alleged that each and every transaction in Claimant's account was authorized or ratified by Claimant and that none of the transactions in Claimant's account violated Smith Barney's rules and that Smith Barney had at all times supervisory procedures in place which met or exceeded those required by any regulatory body. Respondents further requested that Claimant's Claim be dismissed because, among other things, it was filed after the period allowed by the statute of limitations applicable to the claims alleged.

RELIEF REQUESTED

Claimant requested damages in the amount of at least \$126,619.06 and treble damages punitive damages, attorneys' fees, costs and prejudgment interest.

Respondents requested dismissal of the Claim as well as attorneys' fees and costs associated with the defense of this matter.

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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Smith Barney, is found liable and shall pay to Claimant the sum of \$78,018.95 including attorneys' fees and costs.

2. Respondent, McKeel, is found liable and shall pay to Claimant the sum of \$9,178.70 including attorneys' fees and costs.
3. Respondent, Spang, is found liable and shall pay to Claimant the sum of \$4,589.35 including attorneys' fees and costs.
4. Claimant's request for punitive damages is denied.
5. Claimant's request for treble damages is denied.
6. Claimant's request for prejudgment interest is denied.
7. Respondents' request for attorneys' fees and costs is denied.
8. All other claims are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$13,600.00 (two (2) pre-hearing conferences x \$300.00 plus 13 hearing sessions x \$1,000.00).

1. Claimant is hereby assessed forum fees in the amount of \$1,000.00 for which the NASD shall retain \$1,000.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondents, Smith Barney, McKeel and Spang are hereby assessed forum fees in the amount of \$12,600.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable fee of \$250.00 paid by Claimant.
es are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John P. Cullem, Esq.

Public/Chairman

Thomas E. Greef

Public/Panelist

/s/

Peter Alessandri

Industry/Panelist

Date of Award: June 30, 1993