

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Christina Montaruli

92-00747

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.  
Mark Andrew Smith

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**REPRESENTATION**

For Claimant, Christina Montaruli, ("Montaruli"), Allan J. Fedor, Esq. of Fedor & Fedor.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and Mark Andrew Smith ("Smith"), Alejandro Schwed, Esq. of Smith Barney.

**CASE INFORMATION**

Statement of Claim filed: 3/3/92.

Claimant's Submission Agreement signed on: 9/26/91.

A joint Statement of Answer filed by Respondents on: 4/24/92.

Respondent, Smith Barney's Submission Agreement signed on: 4/23/92 by Alejandro Schwed on behalf of the firm.

Respondent, Smith's Submission Agreement signed on: 3/18/92.

**HEARING INFORMATION**

Hearing Dates/Sessions: 1/12/93-Two (2) Sessions.

Hearing Location: Tampa, Florida.

### **CASE SUMMARY**

Claimant alleged that she is an unsophisticated investor and that she trusted Respondents to invest what was substantially all of her liquid assets and that Respondents allowed her to open a margin account and purchased for her account Comcast stock which was unsuitable. Claimant alleged that Respondent failed to properly determine her investment objectives, financial objectives, needs and experience as well as her ability to bear and understand the attendant risks. Claimant further alleged that for over one year she was unaware that her account had suffered several margin calls and that later her account was liquidated at a substantial loss without either her knowledge or approval. Additionally, Claimant alleged that Respondent, Smith Barney, was responsible for the conduct of Respondent Smith for failing to properly supervise him.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and alleged that the trades complained of in the Statement of Claim were unsolicited and that, in fact, were recommended by Claimant's boyfriend and that Claimant was informed by Respondent, Smith, of the risk of purchasing stock on margin and that Respondent warned her that Smith Barney did not "follow" Comcast and suggested that she purchase more conservative securities. Respondent maintained that the purchases were suitable for Claimant based upon the information provided to Respondents prior to purchase. Respondent maintained that Claimant neglected her account.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of the purchase price paid for the investments and interest thereon at 12% per annum from the date of each payment less \$3,700.00 (the amount received from the sale of the stock). Claimant also requested an award of costs, expenses and disbursements including reasonable attorneys' fees and such other relief, including punitive damages, as the arbitrators deem just and proper.

Respondents requested dismissal of the Claim and that Respondents be awarded expenses incurred in defending this Claim.

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

At the hearing, prior to the presentation of evidence, Claimant verbally withdrew the allegations that the Respondents:

1. Committed Common Law Fraud,
2. Were Grossly Negligent
3. Committed Civil Theft under F.S. 812.014, 772.11
4. Committed Criminal Practices violation under F.S. Section 772.104.

**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. Respondents, Smith Barney and Smith are found not liable and therefore, all Claims against them are hereby dismissed.
2. Claimant's request for attorney's fees is denied.
3. Claimant's request for punitive damages is denied.

**OTHER COSTS**

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

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (Two (2) hearing sessions X \$750.00).

1. Claimant is hereby assessed forum fees in the amount of \$750.00 for which the NASD shall retain the \$750.00 previously deposited in full satisfaction thereof.

2. Respondent is hereby assessed forum fees in the amount of \$750.00 payable to the National Association of Securities Dealers, Inc.

**Concurring Arbitrators' Signatures**

/s/  
George S. Coit, Jr., Esq.

Public/Chairman

/s/  
Thomas E. Greef

Public/Panelist

/s/  
Joseph I. Amonette

Industry/Panelist

DATE OF DECISION: MARCH 8, 1993