

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Christine H. Barlett

vs.

NASD #92-00960

Name of Respondent

Arthur D. Gimbel, Inc.

REPRESENTATION

For Claimant: Charles D. Chalmers, Esq., of Stjerwen, Morrill, MacPherson, Franklin & Friel, San Francisco, California.

For Respondent: Phillip McLeod, Esq., of Keesal, Young & Logan, San Francisco, California.

CASE INFORMATION

Statement of Claim filed: March 18, 1992

Claimant's Submission Agreement signed: March 9, 1992

Statement of Answer filed by Respondent on: May 8, 1992

Respondent's Submission Agreement signed on: May 6, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: November 12, 1992 (two sessions)
November 13, 1992 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged: Breach of contract, breach of fiduciary duty and use of deceptive devices in connection with the purchase and sale of securities. Claimant is a single, unsophisticated investor who turned over an individual Retirement Account with approximately \$550,000.00 to respondent in August 1988. Between that time and April 1990, the account was mismanaged, including purchase of speculative common stock securities and excessive trades.

Respondent advised that its investment strategy would result in a long-term rate of return exceeding general market averages, a reduced exposure to risk and volatility, and better than average performance during bear markets. Claimant became concerned because of the decline in the value of her account as shown in a Merrill Lynch report dated October 27, 1989; however she shortly thereafter received a letter from respondent which advised her to disregard the total amount because it understated the real value.

On February 23, 1990, claimant received another Merrill Lynch report which showed a sharp decline in total value. Upon seeking advice from an experienced investor, she terminated the services of respondent on or about April/May 1990. The performance of claimant's portfolio was poor as a result of excessive trades, failure to exercise selling discipline, lack of fundamental value analysis, speculation, sale of calls on securities held, limiting appreciation and engaging in non-conservative investment strategies such as rolling-up on options.

Respondent alleged: Claimant is a 48-year-old real estate agent. During the 20 months her account with respondent, approximately \$550,000.00, made a net profit of over \$5,000.00 after payment of all fees and commissions. Claimant elected a "business-person's risk" investment strategy after full disclosure; she received monthly statements of her account, which performed up to expectations until late 1989 and the first quarter of 1990 when market conditions caused the erosion of most of her earlier earned profit. Claimant did not complain to Mr. Gimbel until shortly before closing her account.

Respondent believed claimant's net worth, including her home, substantially exceeded \$1,250,000.00 and had known her for approximately 15 years before she opened the account. She had been unhappy with her previous investment advisor. Respondent made no guarantees, advised that returns would vary and kept her fully informed of the progress of the account. Claimant ignored respondent's advice to retain her positions which were deeply undervalued. No churning occurred in claimant's account, a substantial portion of the trades being sales and subsequent repurchases of options as hedging devices. The forced liquidation by claimant froze portfolio performance at a low level and precluded her from enjoying exceptional gains on those issues.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$85,000.00;
2. Fees of respondent, with interest;
3. Commissions of excessive trades, with interest; and
4. The amount of interest/dividend income and gain, which the account would have gained if invested according to the written agreement with respondent plus interest on this amount at 10% from May 1, 1990 to the present.

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. Each and every claim is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$500 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Claimant in the amount of \$1,500.00.

calculated as follows: Four hearing sessions times \$500.00/session, minus \$500.00 already paid by claimant as a hearing deposit.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name

Public/Industry

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Signature

DATE SERVED: 11/30/92

Signature

William A. Hage
William A. Hage

Date of Decision: November 13, 1992