

N.A.S.D. FORM

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bertha M. Gardner

92-00965

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Francis W. Casey

Third-Party Respondent

Donald M. Gardner

REPRESENTATION

Claimant Bertha M. Gardner ("Claimant"): Gregory H. Chalak, Esq. of the law firm of Borden & Farley, P.C.

Respondents Smith Barney Harris Upham & Co., Inc. and Francis W. Casey ("Respondents"): Alejandro S. Schneid, Vice President of Smith Barney Harris Upham & Co., Inc.

Third-Party Respondent Donald Gardner ("Mr. Gardner"): Gregory H. Chalak of the law firm of Borden & Farley, P.C.

CASE INFORMATION

Statement of Claim filed: March 16, 1992.

Claimant's Submission Agreement signed on: March 10, 1992.

Joint Statement of Answer and Third Party Claim filed: May 21, 1992.

Respondent Smith Barney Harris Upham & Co., Inc.'s ("Smith Barney") Submission Agreement signed on: May 20, 1992.

Respondent Francis W. Casey's ("Mr. Casey") Submission Agreement signed on: May 11, 1992.

HEARING INFORMATION

Hearing Date/Sessions: October 22, 1992, two sessions.

Hearing Location: NASD office, Philadelphia, PA.

CASE SUMMARY

Claimant alleged that Mr. Casey engaged in unauthorized trading of low-quality issues to Claimant's detriment. Claimant alleged that many of the unauthorized trades breached Claimant's stated investment objective of conservative growth. Claimant alleged that, as she sustained losses in her account, Respondents benefitted from commissions earned by trading her account.

Respondents denied each and every allegation of wrongdoing and maintained that Mr. Gardner controlled the trading in Claimant's account. Respondents maintained that all trades were authorized and suitable for trading in Claimant's account. Respondents maintained that Mr. Gardner was given power of attorney over Claimant's account and that the power of attorney was provided to Mr. Casey. Respondents maintained that Mr. Gardner handled his mother, the Claimant, business affairs. Respondents maintained that Mr. Gardner pursued a growth strategy for his mother's account.

Respondents asserted a Third-Party Claim against Mr. Gardner. Respondents alleged that Mr. Gardner was directly liable for the mismanagement in the Claimant's account. Respondents alleged that to the extent that Claimant's objectives were not followed, or trades were conducted without Claimant's authorization, that Mr. Gardner is liable and Respondents assert any award must be rendered against him. Mr. Gardner replied to the Third-Party Claim and maintained that he was not responsible for all trading in the account. Mr. Gardner maintained that the Respondents, through the action of Mr. Casey, mismanaged Claimant's account. Mr. Gardner denied that he directed transactions in Claimant's account. Mr. Gardner maintained that it was Respondents' who controlled Claimant's account and executed unauthorized trades in Claimant's account.

RELIEF REQUESTED

Claimant requested compensatory damages in an amount in excess of \$10,000 for the loss of her overall investment, reimbursement of all commissions paid and an annual interest rate of 9%.

Respondents requested that Claimant's claim be dismissed and that all costs and punitive damages against the Third-Party Respondent.

Third-Party Respondent, Mr. Gardner, requested that Respondents' Third-Party Claim be dismissed and judgment entered in favor of the Claimant.

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. That Claimant's claim is denied in its entirety.
2. That Respondents' Third-Party Claim against Mr. Gardner is denied in its entirety.
3. That each party shall bear their respective costs', including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That Claimant's hearing session deposit of \$400 shall be retained as costs of the first hearing session and the Respondents jointly and severally are assessed forum fees in the amount of \$300 for the second hearing session.

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

Concurring Arbitrators' Signatures:

Name

Public/Industry

/s/
Arthur R.G. Solnessen/Chairman

Public Arbitrator

/s/
Cornelius C. Clancy

Industry Arbitrator

/s/
Harold A. Stein

Public Arbitrator

Date of Decision: October 26, 1992