

N.A.S.D. CORRECTED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

G. William Filley as  
Executor of the Will of  
Chester R. McGrath

NASD Arbitration  
No.92-01901

Name of Respondent

Smith Barney, Harris Upham & Co., Inc.

REPRESENTATION

For Claimant: Reed H. Benent, Esq., San Francisco, California.

For Respondent: William L. Riley, Esq., and Gregory C. Tenhoff, Esq., Orrick,  
Herrington & Sutcliffe, San Francisco, California.

CASE INFORMATION

Statement of Claim filed: June 8, 1992

Claimant's Submission Agreement signed on: June 15, 1992

Statement of Answer filed: August 26, 1992

Respondent's Submission Agreement signed on: August 21, 1992

HEARING INFORMATION

Hearing Dates/Sessions: November 11, 1992 - 2 Sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged negligence, breach of contract and breach of fiduciary duty with respect to Respondent's payments in excess of the amounts authorized from the account of the late Chester R. McGrath. Claimant further alleged that Respondent's actions made possible the embezzlement of funds from Mr. McGrath's bank account by the holder of Mr. McGrath's durable power of attorney.

Respondent denied the allegations of wrongdoing, and asserted that all payments out of the account were properly made, that Respondent was not in the proximate cause of the loss of the embezzled monies, that Respondent cannot be held liable for the intervening criminal acts of a third party, and that all claims are barred by applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested damages of \$130,000.00 plus interest.

Respondent requested dismissal of all claims.

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. All claims asserted by Claimant are dismissed in their entirety.
2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Claimant is assessed the following forum fees:

2 Sessions @ \$750/session	=	\$1,500.00
Credit for Deposit	=	\$ 750.00
Balance Due	=	\$ 750.00

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Thomas E. Mulvihill	Public Chairperson
Ralph A. Cotton	Public Panelist
Lawrence N. Kummer	Industry Panelist

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Thomas E. Mulvihill

DATE SERVED: 11/30/92

\_\_\_\_\_  
Ralph A. Cotton

\_\_\_\_\_  
Lawrence N. Kummer

Date of Decision: \_\_\_\_\_