

N A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

PUBLIC

Louise Monia

92-03721

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.

REPRESENTATION

For Claimant Louise Monia: Richard W. Vallario, Esq., sole practitioner Nutley, New Jersey.

For Respondent Smith Barney, Harris, Upham & Co., Inc.: Hugh McGovern, Esq., in-house counsel of Smith Barney, Harris, Upham & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: November 2, 1992.

Claimant's Submission Agreement signed on: October 15, 1992.

Statement of Answer filed by Respondent Smith Barney, Harris, Upham & Co., Inc. on: January 6, 1993.

Respondent Smith Barney, Harris, Upham & Co., Inc.'s Submission Agreement signed on: January 4, 1993.

HEARING INFORMATION

Hearing Date/Sessions:
July 14, 1993 / Two Sessions.
July 15, 1993 / Two Sessions.
August 16, 1993 / Two Sessions.

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleged that she was solicited and convinced by Frank Esposito to open an account at Respondent Smith Barney's Philadelphia office by being promised that Claimant would get better returns than she would from her bank deposits, whereby, Claimant explained to Mr. Esposito that her primary intent was adequate income with no risk to her capital. Claimant further alleged that Frank Esposito handled the account until 1989 when he left to go to another brokerage firm, and the account was transferred to Rudy Tilotta who induced Claimant to leave her investments with Respondent. Claimant contended that from the outset Respondent failed to exercise due and proper supervision and control over the acts of its employees, Mr. Esposito and Mr. Tilotta, whereby, Claimant's account was improperly invested, churned and incurred substantial and unnecessary losses. Claimant alleged that Messrs. Esposito and Tilotta engaged in a series of recommendations to Claimant to buy heavy concentrations of particular stock issues, mainly Centacor Corp. stock, not suitable for her investment needs and objectives which caused Claimant to lose monies in her account.

Respondent maintained that Claimant is a wealthy and experienced investor who consistently traded large blocks of stock for short term capital gains. Respondent maintained that Claimant's income objectives were updated in 1989 from "income and growth" to "speculation", and in 1988 when Mr. Esposito left Respondent, Claimant confirmed to Mr. Tilotta she preferred to speculate by aggressively trading large equity positions for short term capital gains. Respondent maintained that Claimant actively monitored her account and spoke regularly with Mr. Tilotta; however, Claimant was not receptive to income recommendations from Mr. Tilotta. Respondent maintained that Mr. Tilotta recommended several drug company stocks, to Claimant in January 1992, whereby, Claimant followed one stock in particular, Centacor, for several weeks and bought 2,000 shares at \$50/share on January 28, 1992. Respondent maintained that over the next several weeks Centacor moved lower in price and during the week of February 24, 1992 Respondent's research analyst gave a best case/worst case scenario for Centacor to Respondent's brokers, whereby, Mr. Tilotta discussed this report with Claimant who decided to lower her asset basis by purchasing an additional 2,000 shares at 38.75 on March 2, 1992. Respondent maintained that Centacor continued to drop in price and after conversations with Tilotta Claimant decided to hold her position; whereby, the stock fell to 16 1/2 and Claimant gave Mr. Tilotta a market order to sell. Respondent maintained the recommendation was suitable given Claimant's financial situation, stated investment objectives and history of aggressively trading blocks of stock.

RELIEF REQUESTED

Claimant requested \$112,507.50 in damages, \$52,718.00 loss of investment income, interest, attorneys' fees and costs.

Respondent requested all claims be dismissed in its entirety and Respondent be awarded costs.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Smith Barney, Harris, Upham & Co., Inc. be and hereby is liable and shall pay Claimant the sum of \$49,504.44 plus interest from April 16, 1992 to August 20, 1993 calculated at the statutory rate.
2. Each party shall bear their own costs including attorneys' fees.

FORUM FEES

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

6 sessions x \$750.00 = \$4,500.00 less \$750.00 hearing session deposit
=
\$3,750.00 net due.

Respondent Smith Barney be and hereby is liable and shall pay the NASD the sum of \$2,700.00 to represent forum fees.

Claimant Louis Monia be and hereby is liable and shall pay the NASD the sum of \$1,050.00 to represent forum fees.

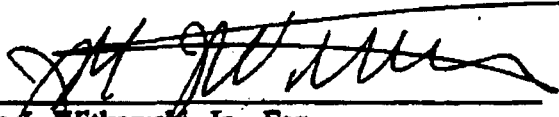
The NASD shall retain the \$200.00 filing fee and \$750.00 hearing session deposit previously paid by Claimant.

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ARBITRATORS' SIGNATURE

Robert D. Herschmann, Esq.
Public Arbitrator

Charles C. Marotta
Public Arbitrator



John J. Witkowski, Jr., Esq.
Industry Arbitrator

Date of Decision: September 27, 1993

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Robert D. Herschmann, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Charles C. Marotta known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

New York

COUNTY OF:

Richmond

SS:

On this *15th* day of *September*, 1993, before me personally appeared John J. Witkowski, Jr., Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Thomas P. Donnelly

THOMAS P. DONNELLY

NOTARY PUBLIC, STATE OF NEW YORK

NO. 43-6085730

QUALIFIED IN RICHMOND COUNTY

COMMISSION EXPIRES *9/30/94*