

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Milan and Johanna Krpan

vs.

Case No.

92-04384

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
H. Thompson Rodman, Jr.
Cynthia A. Mumby

REPRESENTATION

For Claimants Milan & Johanna Krpan ("Claimants"), appeared David C. Harrison, Esq. located at 2100 Arch Street, 8th Floor, Philadelphia, PA 19103

For Respondents Smith Barney Shearson, Inc., H. Thompson Rodman, Jr., and Cynthia A. Mumby appeared Susan E. Harkins, Esq. from the firm of Smith Barney, Inc. at 388 Greenwich Street, New York, New York, 10013

CASE INFORMATION

Claimant's Statement of Claim was filed on December 24, 1992.
Claimant's Submission Agreement was signed on September 5, 1991.

Joint Statement of Answer was filed by Respondents on July 23, 1993.
Respondent Smith Barney's Submission Agreement was signed on August 11, 1993.
Respondent Rodman's Submission Agreement was signed on August 16, 1993.
Respondent Mumby's Submission Agreement was signed on August 23, 1993.

HEARING INFORMATION

Pre-Hearing Conference: February 7, 1996 - 1 Session

Hearing Dates/Sessions: February 15, 1996 - 2 Sessions
March 13, 1996 - 2 Sessions

Hearing Location: Holiday Inn-Downtown-Center City 1800 Market Street
Philadelphia, PA 19103 and American Arbitration Association, 230 South
Broad Street, Philadelphia, PA.

CASE SUMMARY

Claimants alleged that Respondents Rodman and Mumby, account executives for Claimants' funds held with Respondent Smith Barney, made a series of investments that were inappropriate for Claimants' financial position and level of risk tolerance (specifically "Chartwell", and "The Limited", among others); traded on inside information; failed to follow Claimants' directions to liquidate certain shares; and refused to place stop loss orders when ordered to do so by Claimants. Claimants additionally alleged that Respondents Rodman and Mumby made unauthorized solicitations over the phone to them, and that Respondents violated suitability requirements.

Claimants alleged losses of \$81,637.50.

Respondents alleged that the Stock Market crash of October 1987 proximately caused Claimants' losses, rather than any wrongdoing on the part of Respondents. Respondents further maintained that the investments made in 1987 were suitable for Respondents objectives, being similar in objective (*i.e.* aggressive growth), to other of Claimants' investments of which they have no complaint. Respondents denied trading on inside information, and denied the allegation that they refused to execute any of Claimant's directions, including any stop orders. Last, Respondents alleged that Claimants were fully aware of all material facts and risks involved in, and approved of every transaction on their account.

Respondents defended that Claimants' recovery is barred by: failure to state a claim; the statute of limitations and/or the doctrine of laches (the alleged acts and omissions occurred in 1987--Claimants commenced this action beyond the two year period, in 1992); their failure to mitigate damages; and by the doctrines of waiver, estoppel, and ratification.

RELIEF REQUESTED

Claimants requested \$81,637.50 in damages. At the hearing, however, Claimants presented calculations to show a loss ranging from \$53,645.00 to \$70,445.00.

Respondents requested that the claim be dismissed in its entirety, with costs and fees assessed against Claimants. In addition, Respondents requested the records of the individual Respondents, Ms. Mumby and Mr. Rodman, be expunged of any notation of the claim filed by Claimants.

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.

Prior to hearing, Respondents filed a motion to dismiss based on the statute of limitations. The panel denied that motion with the opportunity to renew it at the time of hearing. At the time of the hearing, Respondents did renew that motion and the panel ruled that only those claims sounding in contract for transactions taking place within six years from the date of filing of the claim would be heard.

In addition, Respondents filed a motion to compel production of documents which was ruled on by the chairman. The ruling was that Claimants were to submit all those documents requested in Respondents' First Request for the Production of Documents and Information prior to the hearing to be conducted on February 15, 1996.

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 the Claimants' claim shall be dismissed in full.
2. That the record of Cynthia Mumby and H. Thompson Rodman be expunged with all regulatory authorities to which any notation of this claim have been filed.
3. That all other expenses, including attorneys' fees, shall be borne by the respective parties except as provided for herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.


Non-refundable filing fee:	\$ 150.00
Hearing Session Deposit (4 Sessions @ \$500.00 per session)	\$2000.00
Pre-hearing Conference:	\$ 300.00

TOTAL FEES:	<u>\$2450.00</u>
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1. Claimants be and are hereby liable for all forum fees totalling \$2,450.00. Claimants paid \$650.00 and owe \$1,800.00

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

ARBITRATORS SIGNATURES



Steven T. Stern, Esq.

Public Chair

Roy B. Steenhoff

Public

Edward T. Borer

Industry

Date of Decision: May 20, 1996

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