

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Elaine Kramer

93-01799

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Ronald J. Russo

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 4, 1993, Claimant Elaine Kramer, who appeared Pro Se, alleged that Respondents Smith Barney Harris Upham & Co., Inc. and Ronald J. Russo caused a three month delay in transferring to Oakmark Funds, which caused the value to decrease, and that, Respondent Smith Barney Harris Upham & Co., Inc. should be held liable for the loss she has incurred.

Respondents Smith Barney Harris Upham & Co., Inc. and Ronald J. Russo, through their in-house counsel Linda R. Alpert, Esq., maintained that the delay in transferring to Oakmark was caused by miscommunication by Claimant and by Oakmark, not by any wrongdoing by Respondent Smith Barney Harris Upham & Co., Inc. or Respondent Ronald J. Russo, and that as soon as they became aware of the request, they liquidated her position and sent the funds to Oakmark. The Respondents contended that the Claimant's loss was caused by her failure to designate the correct trustee and to inform her broker of her exact wishes concerning the account, and that, therefore the claim has no merit and should be dismissed.

RELIEF REQUESTED

Claimant Elaine Kramer requested \$700.00 in actual damages.

Respondents Smith Barney Harris Upham & Co., Inc. and Ronald J. Russo requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert Neuer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 27, 1993, by Respondent Smith Barney Harris Upham & Co., Inc. on June 22, 1993 and by Respondent Ronald J. Russo on June 11, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Smith Barney Harris Upham & Co., Inc. and Ronald J. Russo are jointly and severally liable and shall pay to Claimant Elaine Kramer \$450.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Smith Barney Harris Upham & Co., Inc. and Ronald J. Russo are jointly and severally liable and shall pay \$30.00 to the Claimant as reimbursement.

AFFIRMATION

I, **HERBERT NEUER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: October 22, 1993