

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Lu Nell Barnett Johnson

and

93-02017

Name of Respondents

Capital Investment Managers, Inc.
Camden Coberly II, and F. Gregory Smith

REPRESENTATION OF PARTIES

Lu Nell Barnett Johnson ("Claimant") was represented by Carl Barnhart, Esq, Fort Worth, Texas.

Capital Investment Managers, Inc. and F. Gregory Smith ("Respondents") were represented by F. Gregory Smith.

Camden Coberly II ("Coberly") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about May 20, 1993. Submission Agreement of Claimant Lu Nell Barnett Johnson was signed on May 13, 1993.

Statement of Answer was filed by Respondents Capital Investment Managers, Inc. and F. Gregory Smith on or about August 11, 1993. Submission Agreement of Respondent Capital Investment Management was signed on August 11, 1993 by F. Gregory Smith. Submission Agreement of Respondent F. Gregory Smith was signed on August 11, 1993.

Statement of Answer was filed by Respondent Camden Coberly II on or about August 11, 1993. Submission Agreement of Respondent Camden Coberly II was signed on August 11, 1993.

HEARING INFORMATION

The hearing was held on Tuesday, January 18, 1994 in Dallas, Texas for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that in March of 1989, Coberly began trading the accounts of Claimant without regard for the financial ability of the Claimant to suffer losses or her ability even to appreciate or understand the risks involved. The Claimant also alleged that the trading in various stocks was reckless and without regard for the financial abilities of the Claimant considering the nature of the trades, the short holding periods and the demonstrable history of the Claimant to shun trading and choose government insured returns.

Respondents stated that the claims asserted in this matter are without any basis in fact or law and denied each and every claim. Respondents further stated that the Claimant was not a passive investor but one who contacted Coberly daily and visited the office at least twice a month. Respondents also stated that the Claimant corresponded with Coberly almost weekly.

Coberly stated that he did not breach any fiduciary responsibility to the Claimant; that the Claimant spelled out in specific terms the direction she wanted her account to follow; and that the Claimant was aware of all activity in her account. Coberly further stated that the Statement of Claim contains many errors and that the Claimant never expressed any dissatisfaction with her investments or directed him to change investment goals or direction.

RELIEF REQUESTED

Claimant requested an award in the amount of \$62,189.00, 3% per annum for a period of eighteen months representing lost earning power, attorney's fees, and punitive damages in the amount of \$50,000.00. Claimant specifically requested that the award granted in this matter be joint and several against all Respondents.

Respondents Capital Investment Managers, Inc. and F. Gregory Smith requested that the claims be denied.

Respondent Camden Coberly II requested that the claims be denied.

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 original(s) remain on file with the N.A.S.D.

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. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Claimant shall be and hereby is liable for and shall pay to the N.A.S.D. the sum of \$375.00 and Respondents Capital Investment Managers, Inc., Camden Coberly II, and F. Gregory Smith shall be and hereby are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$1,125.00 as additional forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Douglas F. Pierce, Esq.
Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair

January 21, 1994

s/ Arvel G. McCulloch
Arvel G. McCulloch
Public Arbitrator

January 27, 1994

s/ Valynda A. Ewton
Valynda A. Ewton
Industry Arbitrator

January 21, 1994