

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Marguerite Curley

and

93-04823

Name of Respondent

Cullom & Sandow Securities, Inc.  
Grant B. Bortnem

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### **REPRESENTATION OF PARTIES**

Marguerite Curley ("Claimant") was represented by Robert L. Tobey, Esq., Johnston & Budner, Dallas, Texas.

Cullom & Sandow Securities, Inc. ("Respondent Cullom") and Grant B. Bortnem ("Respondent Bortnem") were represented by Ben L. Krage, Esq., Kasmir & Krage L.L.P., Dallas, Texas.

### **CASE INFORMATION**

The Statement of Claim was filed on or about November 22, 1993. Submission Agreement of Claimant Marguerite Curley was signed on February 28, 1994.

Statement of Answer was filed by Respondents Cullom & Sandow Securities, Inc. and Grant B. Bortnem on or about April 26, 1994. Submission Agreement of Respondent Cullom & Sandow Securities, Inc. was signed on March 22, 1994 by Ben L. Krage. Submission Agreement of Respondent Grant B. Bortnem was signed on March 22, 1994.

### **HEARING INFORMATION**

The hearing was held on Wednesday, February 1, 1995 in Dallas, Texas for two (2) sessions and Friday, February 23, 1995 for two (2) sessions for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents committed fraudulent and manipulative acts including but not limited to:

- ▶ directing and effecting trades in unsuitable securities including stock and options;

- ▶ misrepresenting and omitting to state material facts about the accounts;
- ▶ directing and effecting excessive trades with the intent to produce substantial commissions;
- ▶ misrepresenting the quality and mix of securities purchased; and
- ▶ Respondent Cullom failed to adequately supervise and direct Respondent Bortnem.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant was a sophisticated and employed individual who is the purchasing agent for her employer. It was stated that in her capacity as purchasing agent, Claimant negotiates prices and plays an important role in the company. Respondents also stated that when she opened her account with Respondent Bortnem's previous employer, Claimant stated that she wanted a more aggressive approach to investing than money market interest rates. It was further stated that each trade was discussed with the Claimant prior to being made and the decision to make the trade was solely the decision of the Claimant.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$34,000 together with pre-award interest as allowed by law; punitive damages in the amount the Panel deems just and equitable; all costs of arbitration, including attorneys' fees, disbursements, expenses, and post-award interest on all such sums as allowed by law; and such other relief as the Panel deems just and proper.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the commencement of the hearing of this matter on February 1, 1995, Claimant withdrew the claims of churning.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Respondents Cullom & Sandow Securities, Inc. and Grant B. Bortnem shall be and hereby are jointly and severally liable for and shall pay to the Claimant Marguerite Curley the sum of **Thirty two thousand dollars (\$32,000)**. In making this award, the undersigned arbitration panel finds that the Respondents engaged in constructive fraud.

2. Interest at the statutory rate of interest in the State of Texas is awarded on the above stated sum from and inclusive of August 1, 1992 to and inclusive of the date this Award is paid in full.
3. Respondents Cullom & Sandow Securities, Inc. and Grant B. Bortnem shall be and hereby are jointly and severally liable for and shall pay to the Claimant Marguerite Curley the sum of **Seven thousand five hundred dollars (\$7,500)** as attorneys' fees. In making this award of attorneys' fees, the undersigned arbitrators find that they have authority under the applicable Texas statutes and case law.
4. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$400 = \$1,600 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$120 and shall refund as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant Marguerite Curley. Respondents Cullom & Sandow Securities, Inc. and Grant B. Bortnem shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,600 as forum fees. **Fees are payable to the National Association of Securities Dealers, Inc.**

**/s/ Arthur H. Geffen, Esq.**  
Arthur H. Geffen, Esq.  
Public Arbitrator, Presiding Chair

**March 27, 1995**

**/s/ Ann Blaess Kimball, Esq.**  
Ann Blaess Kimball, Esq.  
Public Arbitrator

**April 20, 1995**

**/s/ Earle A. Shields**  
Earle A. Shields  
Industry Arbitrator

**March 20, 1995**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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Report of Arbitrators

During the course of the arbitration hearing of the above captioned matter, the undersigned arbitrators heard testimony and received evidence regarding the supervisory procedures of Cullom & Sandow and the business practices of Cullom & Sandow and Ben Bortnem that they feel requires investigation by the appropriate NASD District office.

Dated:

/s/ Arthur H. Geffen, Esq.

March 27, 1995

Arthur H. Geffen, Esq.  
Public Arbitrator, Presiding Chair

/s/ Ann Blaess Kimball, Esq.

April 20, 1995

Ann Blaess Kimball, Esq.  
Public Arbitrator

/s/ Earle A. Shields

March 20, 1995

Earle A. Shields  
Industry Arbitrator