

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant**

Elizabeth Hyde Summer

94-00204

**Name of Respondents**

A. Baker Duncan;  
Goodhue W. Smith, III;  
Edward B. Patton;  
Christopher T. Moser;  
John D. Alexander, Jr.;  
J. Lance Lahourcade;  
Duncan Smith Co.;  
Duncan Smith Securities Inc.

**REPRESENTATION**

For Claimant: Elizabeth Hyde Summer ("Summer") was represented by Malinda A. Gaul, Esq. of Kosub & Gaul, located in San Antonio, Texas.

For Respondent: A. Baker Duncan ("Duncan"); Goodhue W. Smith, III ("Smith"); Edward B. Patton ("Patton"); Christopher T. Moser ("Moser"); John D. Alexander, Jr. ("Alexander"); J. Lance Lahourcade ("Lahourcade"); Duncan-Smith Co. ("Company"); and Duncan-Smith Securities Inc. ("Securities") were represented by Andrew R. Harvin, Esq. of Doyle Restrepo, Harvin & Robbins, L.L.P., located in Houston, Texas and Ann H. Megee, Esq. of Thornton, Summers, Biechlin, Dunham & Brown, L.C.

**CASE INFORMATION**

Statement of Claim filed: January 19, 1994.

Claimant's Submission Agreement signed on: January 7, 1994.

Respondents' Motion to Dismiss and Answer filed: April 1, 1994

Respondent Duncan's Submission Agreement signed on: March 14, 1994.

Respondent Smith's Submission Agreement signed on: March 14, 1994.

Respondent Patton's Submission Agreement signed on: March 16, 1994.

Respondent Moser's Submission Agreement signed on March 15, 1994.  
Respondent Alexander's Submission Agreement signed on: March 15, 1994.  
Respondent Lahourcade's Submission Agreement signed on: March 16, 1994.  
Respondent Duncan-Smith Co.'s Submission Agreement signed on: March 14, 1994 by Goodhue W. Smith, III, President, Duncan Smith Co.  
Respondent Duncan Smith Securities, Inc.'s Submission Agreement signed on: March 14, 1994 by Goodhue W. Smith III, President, Duncan-Smith Securities Inc.

### **HEARING INFORMATION**

Pre-Hearing Conference: March 31, 1995 for One (1) session before the full panel;  
Hearing Dates/Sessions: April 19, 1995 for Two (2) sessions; and  
April 20, 1995 for One (1) session.  
Hearing Location: Houston, Texas

### **CASE SUMMARY**

Claimant Summer alleged that Respondents made false representations of material facts to induce Summer to enter into employment with Smith Co. & Smith Securities. The Respondents represented that Summer would be an equal part of the companies, with an equal opportunity to advance. However, the Respondents had no intentions of making her an equal or allowing her equal opportunities to advance. Instead, Duncan created a hostile work environment for Summer which induced the other individual Respondents to act accordingly. These actions were willful and malicious, and resulted in the constructive discharge of Summer.

Based upon the allegations of the Statement of Claim, Summer asserted claims for breach of contract; fraud; tortious interference with employment contract; and infliction of emotional distress.

Respondents denied the material allegations of the Statement of Claim, alleging that Summer was an employee at will at Smith Co. with no written or oral agreement between the parties. In August of 1990, Summer was advised that her employment would be discontinued at the end of the year because no improvement was seen in her work since she was counseled by Duncan in March of 1990. Any criticism of Summer's work was because of her performance and not gender. Summer terminated employment when she cleaned out her desk and removed personal items from her office without notification to Respondents.

### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents as follows:

1. Breach of Contract-Summer requested general and special damages for lost salary for 1990 of \$12,256.36; lost salary for 1991 of \$40,000.00; lost bonus for 1990 and 1991 of \$25,000.00; lost for profit sharing of \$17,137.00; commissions owing of \$2,380.08; lost stock purchase of \$32,400.00; medical expenses of \$830.00; and insurance expenses of \$1,237.76;
2. Fraud-The amounts above plus lost benefit of being an equal principal of \$67,750.00 and exemplary damages in the sum of \$2,800,000.00;
3. Tortious Interference with Employment Contract-The above amounts plus \$1,200,000.00 for mental anguish, suffering and personal humiliation and exemplary damages in an amount of \$2,800,000.00; and
4. Inflectional Emotional Distress-Damages in an amount of \$1,200,000.00 and exemplary damages of \$2,800,000.00.

In addition, Summers requested reasonable attorneys' fees, costs and/or expenses incurred in arbitration.

Respondents requested that the Claim be dismissed and that they be awarded costs and attorneys' fees, as well as any other relief the Panel deemed just.

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

At the conclusion of Claimant's case, the Respondents presented a Motion to Dismiss Respondents Patton, Moser, Alexander and Lahourcade. In addition, Respondents presented a Motion for Directed Verdict. The Panel considered the arguments presented by the Respondents and the objections of the Claimants. The arbitrators determined that both Motions would be granted.

### **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 Motion to Dismiss Respondents Edward B. Patton, Christopher T. Moser, John D. Alexander, Jr., and J. Lance Lahourcade is hereby granted and the claims

against these Respondents are dismissed with prejudice;

2. The Respondents' Motion for Directed Verdict is granted and all claims against remaining Respondents are dismissed with prejudice;

3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

4. Any relief not specifically granted is hereby denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$1,000.00 per session = \$4,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 non-refundable claim filing fee and the \$1,000.00 hearing session deposit previously deposited by the Claimant, Elizabeth Hyde Summer. The NASD shall refund the \$750.00 overpayment previously deposited by Claimant. In addition, Respondents A. Baker Duncan; Goodhue W. Smith, III; Edward B. Patton; Christopher T. Moser; John D. Alexander, Jr.; J. Lance Lahourcade; Duncan Smith Co.; and Duncan Smith Securities Inc. are jointly and severally liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Martha Failing, Esq.  
Martha Failing, Esq.  
Public Arbitrator  
Chairperson

Jacqueline R. Fox, Esq.  
Jacqueline R. Fox, Esq.  
Public Arbitrator

Ronald R. Simpson  
Ronald R. Simpson  
Industry Arbitrator

For NASD Use Only/Date served by NASD:

August 1, 1995