

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Elma Slade Chess

95-00199

Name of Respondents

Smith Barney Shearson, Inc.
Martin Shea

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 13, 1995, Claimant Elma Slade Chess, through her representative, Brooks S. Thayer, Esq., of Latanzi, Spaulding & Landreth, in Orleans, MA., alleged that Respondents, Smith Barney Shearson, Inc. ("SBS") and Martin Shea ("Shea"), failed to execute a transfer of her account. Claimant further alleged that by written instruction dated December 16, 1993, she directed SBS to immediately "transfer my entire securities account to PWI." ("PWI"). Claimant contended that the written direction provided that SBS should contact Claimant with respect to the disposition of any assets in her securities account that were either non-transferable or non-deliverable. Claimant further contended that beginning on January 14, 1994, SBS commenced liquidating her account and transferring the assets or proceeds to PWI but failed to liquidate or transfer five mutual funds, nor did it contact Claimant stating that it would not transfer the assets. Claimant alleged that on or about May 2, 1994, Respondents liquidated the mutual funds at a price lower than that on January 14, 1994; the day on which the funds should have been liquidated. As a result of the above, Claimant alleged that she has suffered a loss for which Respondents should be liable.

Respondents Smith Barney Shearson, Inc. and Martin Shea, through their representative, Madelyn Levy, Esq., in-house counsel, for SBS, maintained that each of the mutual funds which remained at SBS were SBS proprietary funds and, as a matter of general industry practice, are not transferable from one brokerage house to another - they must first be liquidated and then the cash proceeds are transferred. Respondents further maintained that by mid-January, 1994, the transfer of Claimant's assets was completed, except for these SBS proprietary

funds. Respondents contended that it was not until April 27, 1994, that Claimant notified Respondents that the funds had not been transferred and it began the process of liquidating Claimant's position in those funds so that the proceeds could be sent to PWI. Respondents further contended that between January, 1994 and April, 1994, Claimant continued to receive monthly account statements which indicated that the funds remained in Claimant's account and continued to pay dividends and continued to fluctuate in value. As a result of the above, Respondents contended that they should not be held liable.

RELIEF REQUESTED

Claimant Elma Slade Chess, requested \$7,880.71 in actual damages, plus interest and costs.

Respondents Smith Barney Shearson, Inc. and Martin Shea, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David Plimpton, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 2, 1995 and by the Respondent Martin Shea, on March 30, 1995 and by Respondent Smith Barney Shearson, Inc., on April 19, 1995.

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 Shearson, Inc. and Martin Shea, are jointly and severally liable and shall pay to the Claimant Elma Slade Chess, \$7,880.71 in actual damages.
2. Respondents Smith Barney Shearson, Inc. and Martin Shea are jointly and severally liable and shall pay to the Claimant Elma Slade Chess, interest at the rate of 8% per annum, from May 3, 1994 to the date of the payment of the Award.

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3. The parties shall bear their respective costs.
4. All other relief requests are denied.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Elma Slade Chess, shall be retained by the NASD, Inc. Respondents Smith Barney Shearson, Inc. and Martin Shea, are jointly and severally liable and shall pay to the Claimant Elma Slade Chess, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **DAVID PLIMPTON, 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.



David Plimpton, Esq.

DATE OF DECISION: August 24, 1995