

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Helen K. Ruetsch and Alexander S. Drugos

95-02196

Name of Respondents

Smith Barney Shearson, Inc.  
Anthony Crupi

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REPRESENTATION

For Claimants Helen K. Ruetsch and Alexander S. Drugos ("Ruetsch" and "Drugos", respectively) appeared William A. Despo, Esq., from the law firm of William A. Despo, P.C. located in Newark, New Jersey,

For Respondent Smith Barney Shearson, Inc. ("Smith Barney") appeared Linda R. Alpert, Esq., in-house counsel of Smith Barney Shearson, Inc. located in New York, New York.

Respondent Anthony Crupi ("Crupi") appeared pro se.

CASE INFORMATION

A joint Statement of Claim was filed on May 8, 1995. Claimant Ruetsch's Submission Agreement was signed on May 3, 1995. Claimant Drugos's Submission Agreement was signed on May 8, 1995. A joint Amended Statement of Claim was filed on November 8, 1995.

A Statement of Answer was filed by Respondent Smith Barney on June 29, 1995. Respondent Smith Barney's Submission Agreement signed on June 29, 1995. An Answer to the Amended Statement of Claim was filed by Respondent Ssmith Barney on November 20, 1995.

A Statement of Answer was filed by Respondent Crupi on October 3, 1995.

Respondent Crupi did not file a duly executed Submission Agreement.

An Answer to the Amended Statement of Claim was filed by Respondent Crupi on April 3, 1996.

#### HEARING INFORMATION

Hearing Dates/Sessions:	April 2, 1996	-	2 sessions
	June 13, 1996	-	2 sessions
	June 14, 1996	-	1 session

All hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

#### CASE SUMMARY

Claimant Ruetsch alleged that she opened two accounts, one for herself and the other for her grandson, Drugos, through Crupi, an account representative/broker, at Smith Barney. Ruetsch also alleged that she deposited \$70,000.00 in her account and \$7,000.00 in Drugos' account. Ruetsch further alleged that, at all relevant times, both Smith Barney and Crupi were aware that her investment objectives were to gain monthly income and to preserve the principal and that the funds were earmarked for the education of her grandchildren. Ruetsch further asserted that she informed Respondents that the investments were intended to provide a necessary source of income. Ruetsch also asserted that at the time she opened the account she was 63 years old, not working, and separated.

Ruetsch contended that she received monthly checks and was repeatedly informed and assured by Crupi that the checks represented accrued interest and that the principal was safe and intact. Ruetsch also contended that, on or about the summer of 1990, she learned that her initial investment had been substantially depleted. Ruetsch further contended that she requested the invasion of her principal on one occasion so as to receive \$5,000.00.

Ruetsch alleged that respondents directed, instructed, and controlled claimants' accounts, and recommended, instructed and/or solicited the purchases of the following securities for claimants: 11/20/96 Lepercq Corp. Income Fund L.P. for \$5,000.00, 12/29/87 Capital Source II L.P. for \$15,000.00, 6/20/89 Secured Equity Leasing Plus, L.P. for \$5,000.00, 11/3/89 Secured Equity Leasing Plus, L.P. for \$2,150.00. Ruetsch further alleged that the last three of the listed transactions were done on margin.

Ruetsch also contended that Crupi, acting individually and on behalf of Smith Barney, opened a margin account for her without prior approval. Ruetsch further alleged that she received a margin call from Smith Barney requiring her to deposit additional funds in order to avoid liquidation of her life savings. Ruetsch contended that Crupi was terminated at around the same time that she learned her accounts fell below margin. Ruetsch also contended that in April of 1991, the New York Stock Exchange ("NYSE") censured and barred Crupi from working in the securities industry for three years. Ruetsch further contended that during the five years that he was employed by Smith Barney and its predecessor, E.F. Hutton, Crupi had been named as respondent in at least ten customer complaints and two NYSE enforcement actions.

Ruetsch alleged that both Smith Barney and Crupi breached their fiduciary duty to her and Drugos whereby: a) respondents recklessly and negligently omitted to provide her material information concerning the activities of her accounts, and b) respondents wilfully and knowingly put their interests before claimants' rights and interests.

Ruetsch, in her amended Statement of Claim alleged that Smith Barney and Crupi intended to inflict extreme mental anguish and emotional distress upon her through conduct which was deliberate, intentional, willful and/or reckless and was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and can be regarded as atrocious, and utterly intolerable in terms of the standard of conduct applicable to investment advisors and/or financial consultants. Ruetsch further asserted respondents' negligent conduct with respect to her investments caused her to suffer extreme mental anguish and emotional distress. Ruetsch contended that as a result of emotion distress caused by respondents' intentional or negligent conduct, she suffers from chronic gastric ulcers which require constant medical care. Ruetsch also asserted that respondents had a duty to inform claimants of the wrongdoing chronicled in the Statement of Claim. Ruetsch further asserted that respondents knowingly, willfully, deliberately, and/or recklessly failed to inform claimants of their wrongdoing.

Respondent Smith Barney denied all of claimants' allegations. Smith Barney asserted that the majority of Ruetsch and Drugos' claims are barred under Section 15 of the NASD Code of Arbitration Procedure (the "Code") since the claims involved purchases made more than six years prior to filing this arbitration proceeding. Smith Barney also asserted that Ruetsch should have been aware that her accounts were on margin since she received confirmations of each trade as well as monthly account statements which showed all transactions including the margin interest charges. Smith Barney further asserted that claimants received a prospectus prior to the purchase of each limited partnership. Smith Barney contended that the prospectuses disclosed all material facts and indicated that no assurance of the partnerships' objectives was given.

Smith Barney further asserted that Ruetsch and Drugos ratified all transactions and waived any asserted deviation from their alleged investment goal because they accepted and retained the confirmations, statements, and the benefits of transactions in their accounts.

Smith Barney maintained that there is no law which requires a brokerage firm to insure its clients against loss. Smith Barney also maintained that the arbitration panel has no power to award punitive damages under controlling state law.

Smith Barney asserted that the claimants' claims concerning negligent and intentional infliction of emotional distress and for fraudulent concealment are suspicious because, although this information was known to claimants' at the time of filing, it was not included in the initial claim. Smith Barney further asserted that claimants' do not have a right to recover for such alleged damages and requested that such claims be stricken from the record.

Respondent Crupi denied all of claimants' allegations. Crupi maintained that in 1986 he first met with Ruetsch and, that after full disclosure, she initially invested in the Putnam Hi Income Government Fund. Crupi also maintained that due to Ruetsch's over eagerness to gain more return, he opened a margin account for Ruetsch upon her request and approval. Crupi further maintained that the investment depletion was due to Ruetsch's withdrawals to finance a trip on the Concord to Great Britain and to return on the QEII.

Crupi asserted that at all relevant times Ruetsch knew that her account was on margin since she received monthly account statements and a letter from him, dated November 14, 1989, which clearly highlighted a margin trade. Crupi also asserted that he believed that Ruetsch's accountant also took tax deductions for margin interest.

In response to the Amended Statement of Claim, Crupi further denied liability to the claimants.

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

The arbitration panel made the following rulings concerning Respondent Anthony Crupi who did not file a duly executed Submission Agreement:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent Crupi was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent Crupi pursuant to Section 12 of the NASD Code of Arbitration Procedure.

3. In view of (2) above, the panel found the Respondent Crupi was required to file with the NASD a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure.

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 originals remain on file with the NASD.

### **RELIEF REQUESTED**

Claimants requested compensatory damages for the depletion of her initial investments. Ruetsch further requested compensatory and punitive damages for her pain and suffering. Claimants also requested reasonable attorneys' fees and costs. Claimants further requested other relief as the arbitration panel deems just and equitable.

Respondent Smith Barney requested that the case be dismissed in its entirety.

Respondent Crupi requested the case to be dismissed by its entirety.

### **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. Respondent Smith Barney Shearson be and hereby is liable and shall pay to Claimant Helen K. Ruetsch \$95,862.78 in actual damages.
2. Respondent Anthony Crupi be and hereby is liable and shall pay to Claimant Helen K. Ruetsch \$6,740.00 in actual damages.
3. The claims of Claimant Alexander S. Drugos against Respondents Smith Barney Shearson and Anthony Crupi are denied in their entirety.
4. Claimants' request for punitive damages is denied.
5. Each party shall bear their own attorneys' fees and costs.

**FORUM FEES**

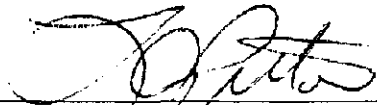
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee previously paid by the Claimants and have assessed the following forum fees:

5 hearing sessions X \$600.00	= \$3,000.00
minus Claimant's \$600.00 deposit	= <u>\$ 600.00</u>
total outstanding	= \$2,400.00

Respondent Smith Barney be and hereby is liable for \$3,000.00 representing the total amount of hearing session fees. Therefore, Respondent Smith Barney shall pay to the Claimant Helen K. Ruetsch \$600.00 as reimbursement of the hearing session deposit previously paid. Respondent Smith Barney is liable and shall pay to the NASD \$2,400.00 representing the unpaid portion of the hearing session fees.

Fees are payable to The National Association of Securities Dealers, Inc.

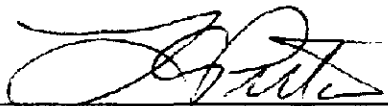
**ARBITRATORS' SIGNATURES**

  
\_\_\_\_\_  
Lawrence A. Pittore, Esq.  
Public Chairperson

\_\_\_\_\_  
Stanley M. Ulanoff  
Public Arbitrator

\_\_\_\_\_  
John A. Borgese, Esq.  
Industry Arbitrator

I, **LAWRENCE A. PITTORE, ESQ.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this document which is my award

  
\_\_\_\_\_  
Lawrence A. Pittore, Esq.  
Public Chairperson

Date of Decision: July 23, 1996

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Lawrence A. Pittore, Esq.  
Public Chairperson

Stanley M. Ulanoff  
Stanley M. Ulanoff  
Public Arbitrator

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John A. Borgese, Esq.  
Industry Arbitrator

I, STANLEY M. ULANOFF, do hereby affirm, pursuant to Article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this document which is my award

Stanley M. Ulanoff  
Stanley M. Ulanoff  
Public Arbitrator

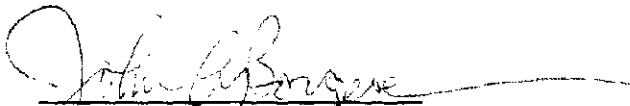
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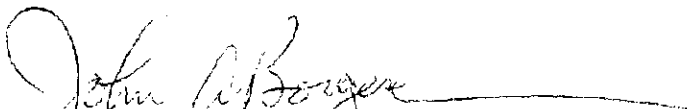
ARBITRATORS' SIGNATURES

\_\_\_\_\_  
Lawrence A. Pittore, Esq.  
Public Chairperson

\_\_\_\_\_  
Stanley M. Ulanoff  
Public Arbitrator

  
\_\_\_\_\_  
John A. Borgese, Esq.  
Industry Arbitrator

I, **JOHN A. BORGESE, ESQ.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this document which is my award

  
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John A. Borgese, Esq.  
Industry Arbitrator

Date of Decision: July 23, 1996