

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Elizabeth M. Horton,

Claimant,

v.

No. 95-04614

Financial Dynamics, Inc.,
Lauren G. Childress, and
Chubb Securities Corp.,

Respondents.

REPRESENTATION OF PARTIES

Claimant Elizabeth M. Horton was represented by Michael H. Wald, Esq. of Law Offices of Michael H. Wald located in Richardson, TX.

Respondent Financial Dynamics, Inc. was not represented (see "Other Issues Considered and Decided" below).

Respondent Lauren G. Childress was represented by Jeffrey M. Tillotson, Esq. of Lynn, Stodghill, Melsheimer & Tillotson located in Dallas, TX.

Respondent Chubb Securities Corp. was represented by C. Mark Stratton, Esq. of Hirsch, Sheiness & Garcia located in Houston, TX.

CASE INFORMATION

Claimant Elizabeth M. Horton's ("Claimant") Statement of Claim was filed on or about September 29, 1995. Claimant's Amended Statement of Claim was filed on or about February 10, 1996. Claimant's Submission Agreement was signed on September 18, 1995.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer or a submission to arbitration from respondent Financial Dynamics, Inc. (see "Other Issues Considered and Decided" below).

Respondent Lauren G. Childress' Statement of Answer was filed on or about January 11, 1996. Respondent Lauren G. Childress' Uniform Submission Agreement was signed on January 11, 1996.

Respondent Chubb Securities Corp.'s Statement of Answer was filed on or about April 18, 1996. Respondent Chubb Securities Corp.'s Uniform Submission Agreement was signed on April 16, 1996 by Mary Toumpas, Assistant Vice President of Chubb Securities Corp.

HEARING INFORMATION

There were no pre-hearing conferences.

The hearing was held on: October 29, 1996, for two (2) sessions; and
 October 30, 1996, for three (3) sessions.

The hearing was held in Dallas, TX.

CASE SUMMARY

Claimant Elizabeth M. Horton ("Claimant") alleged that respondent Lauren G. Childress ("Respondent Ms. Childress") and respondent Chubb Securities, Inc. ("Respondents Chubb"), Respondent Ms. Childress' employer at all relevant times, made misrepresentations and omissions of material facts, engaged in unsuitable transactions, and breached their fiduciary duty. Claimant asserted the following: Claimant opened an account with Respondent Chubb in December of 1993. Respondent Ms. Childress solicited and persuaded Claimant to purchase G.T. Global in December 1993 without ever advising Claimant of her right to reject unsuitable trades, even when the investments did not meet her investment objectives. Respondent Ms. Childress failed to explain and disclose the inherent risks. Respondent Ms. Childress made trades in Claimant's account which Respondent Ms. Childress knew or should have known were contrary to her investment objective of safety of principal. Respondent Ms. Childress traded contrary to Claimant's limited request of high quality, secure bond funds and certificates of deposit by recommending and implementing a risky strategy of investing in a mutual bond fund that invested in 50% junk bonds and primarily foreign issues, which was engaged in with Claimant's "reluctant acquiescence." Respondent Chubb failed to properly supervise Respondent Ms. Childress. As a result of these acts and omissions, Claimant alleged injuries.

Respondent Ms. Childress denied the allegations set forth in the Statement of Claim. Respondent Ms. Childress made the following statements: Claimant had one objective, which was to increase monthly income. She informed Claimant that in order to fulfill this objective, Claimant would have to incur risks. She recommended that Claimant invest in the Franklin Income Fund and invest in the G.T. Global Strategic Income Fund, provided Claimant with copies of the prospectus for each one, and fully explained to Claimant the risks associated with each of these investments. Claimant clearly understood the nature of these investments and that she, Claimant, did not have to make these investments, and Claimant acknowledged in writing that she understood that these investments carried risks and that she accepted these risks. Claimant realized losses by moving her money from the G.T. Global Strategic Income Fund. Furthermore, Respondent Ms. Childress made the following

affirmative defenses: (1) Claimant's claims are barred by the doctrines of waiver, ratification, and estoppel; (2) Claimant is barred from recovery due to contributory negligence; (3) Respondent Ms. Childress never owed a fiduciary duty to Claimant; (4) Claimant's claims are barred in whole or in part, by the applicable statutes of limitations; (5) Claimant has failed to mitigate her losses; (6) Claimant is not entitled to recover attorneys' fees under applicable law; and (7) Claimant's losses, if any, were proximately caused by intervening events in the marketplace.

Respondent Chubb denied the allegations set forth in the Statement of Claim. In addition to the statements made by Respondent Ms. Childress, Respondent Chubb stated that Respondent Ms. Childress is not an employee of Chubb Securities Corp., rather she is an independent contractor. Respondent Chubb made the following affirmative defenses: (1) Claimant's claim should be dismissed pursuant to Sections 16 and 26(a) of the NASD Code of Arbitration Procedure; (2) certain of Claimant's claims fail to state a claim for which relief can be granted and are otherwise deficient; (3) Claimant knew or should have known the associated risks, standards of suitability, and commissions; (4) Claimant authorized, consented to, or ratified every relevant trade; (5) Claimant failed to exercise due diligence or exercise reasonable care; (6) Claimant failed to mitigate her damages; (7) Claimant's losses were caused by her own conduct or by market forces; and (8) punitive damages are not recoverable in this arbitration.

RELIEF REQUESTED

Claimant Elizabeth M. Horton requested: an award in the amount of \$25,814 for compensatory damages; an award in the amount of \$77,442 for punitive damages; an award in the amount of \$3,000 for filing fees and expenses of the proceeding; and an award of attorney's fees for a total request of damages in the amount of \$106,256.

Respondent Lauren G. Childress requested that the claims asserted against her be denied in their entirety.

Respondent Chubb Securities Corp. requested that the Statement of Claim against it be dismissed with prejudice and that all costs of arbitration be assessed against claimant Elizabeth M. Horton.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Financial Dynamics, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration and is not required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure because it is not a member of the NASD. In addition, because respondent Financial Dynamics, Inc. did not voluntarily submit to NASD Regulation, Inc.'s jurisdiction, this arbitration panel does not have the authority to render an enforceable award against this respondent.

At the hearing, respondents Lauren G. Childress and Chubb Securities Corp. moved to postpone hearing upon being informed that claimant Elizabeth M. Horton's expert witness would testify by telephone. However, the undersigned arbitrators declined to rule on this motion since it became moot when the expert witness appeared in person to testify.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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. That the Statement of Claim is dismissed in its entirety with prejudice; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were five (5) hearing sessions x \$750 = \$3,750 in forum fees. Pursuant to §10332(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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the claimant Elizabeth M. Horton.

Claimant Elizabeth M. Horton is liable for and shall pay forum fees in the amount of \$1,125 (= ½ \$3,750 total forum fees - \$750 hearing session deposit).

Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Respondent Chubb Securities Corp.

Respondent Chubb Securities Corp. is liable for and shall pay forum fees in the amount of \$1,875 (= ½ \$3,750 total forum fees).

The NASD Regulation, Inc. Office of Dispute Resolution shall refund respondent Lauren G. Childress' \$200 overpayment.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ David G. Beerbower
David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

December 4, 1996

/s/ Joe S. Shepherd
Joe S. Shepherd
Public Arbitrator

December 4, 1994

/s/ G. Dale McKissick
G. Dale McKissick
Industry Arbitrator

December 3, 1996

Date of Service by the NASD: December 16, 1996