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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Carolyn J. Whisenant,

Claimant,

and

No. 96-01661

Summit Brokerage Services, Inc. and Richard L. Parker, Jr.

Respondents.

REPRESENTATION OF PARTIES

Claimant, Carolyn J. Whisenant, was represented by W. Kirby Lockhart, Esquire of Hargis, Wood & Lockhart, located in Little Rock, Arkansas.

Respondents, Summit Brokerage Services, Incorporated and Richard L. Parker, Jr., were represented by Alfred F. Angulo, Jr., Esquire of Laser, Wilson, Bufford & Watts, P.A., located in Little Rock, Arkansas.

CASE INFORMATION

Carolyn J. Whisenant's Statement of Claim was filed on or about April 17, 1996.

Carolyn J. Whisenant's Submission Agreement was signed on April 3, 1996.

Summit Brokerage Services Incorporated and Richard L. Parker, Jr.'s Statement of Answer was filed on or about August 15, 1996.

Summit Brokerage Services Incorporated's Submission Agreement was signed on August 9, 1996 by Richard L. Parker, Jr., for Summit Brokerage Services, Inc.

Richard L. Parker, Jr.'s Submission Agreement was signed on August 9, 1996.

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HEARING INFORMATION

Pre-hearing conferences were held on: January 31, 1997 for one (1) session; and February 7, 1997 for one (1) session.

The hearing was held on July 14, 1997 for three (3) sessions.

The hearing was held in Little Rock, Arkansas.

CASE SUMMARY

Claimant, Carolyn J. Whisenant ("Claimant"), brought this action to recover losses allegedly resulting from unsuitable investments by Summit Brokerage Services, Incorporated ("Summit") and its President and registered representative, Mr. Richard L. Parker, Jr. ("Mr. Parker").

Claimant stated that she opened an account with Mr. Parker and Summit ("Respondents") in August 1992 with 1,600 shares of her Wal-Mart stock that she acquired through an employee stock plan. According to Claimant, Mr. Parker was informed that her Wal-Mart stock represented her retirement money, that she was looking for a conservative investment to preserve her principal investment and to generate some income to live on, and that she had a total lack of knowledge relating to investments. Claimant asserted that although she did not possess any copies of executed margin and option agreements and did not have any specific recollection of signing any such agreements, the first transaction conducted by Mr. Parker in her account was the purchase of a Wal-Mart option on margin. Claimant alleged that Respondents continued option trading in her account over the next two years, which included leap and index options, without any disclosure of the speculative and risky nature of these transactions and the true status and extent of losses in her account. Claimant alleged that Mr. Parker fraudulently misrepresented or omitted to state or disclose the speculative nature of these investments that contravened the financial needs, assets and objectives of Claimant in order to produce commission business, all while exposing her to excessive market risk and unreasonable credit risk. Based on these allegations, Claimant made the claims of common law fraud and violation of A.C.A. § 23-42-106 of the Arkansas Securities Act. Claimant stated that the sum of the realized loss incurred as a result of this option trading, the margin interest paid on the account, and the commissions charged by Respondents totaled \$26,133.63.

Respondents denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on their part. According to Respondents, Claimant was reluctant to sell her Wal-Mart shares, but demanded income from her account. Respondents stated that they and Claimant agreed on a strategy to utilize options and the margin account. Respondents contended that they and Claimant discussed, in detail, the risks of buying and selling options and buying equities on margin and that Claimant readily accepted these risks and signed option and margin agreements. Respondents also stated that the total losses in the account were \$12,626.47, which were offset by

gains of \$5,095.21, leaving a total loss of \$7,531.26. Respondents asserted the following affirmative defenses: (1) Claimant's Statement of Claim failed to state a cause of action under any or all of the laws, rules, or regulations cited therein; (2) there was no legal or factual basis for awarding compensatory or punitive damages to Claimant; (3) Claimant, in her calculations of account losses, ignored the gains made in the account, ignored the distributions and withdrawals taken from the account, and misleadingly attributed the decline in market price of Wal-Mart stock to Respondents; (4) there was no private right of action for any violations of internal or self-regulatory organization rules or regulations; (5) at all times material, Respondents acted in good faith to Claimant with no intent to harm her or conceal anything from her; (6) the trading and strategy complained of were authorized by Claimant; (7) Claimant ratified all of the transactions of which she complained; (8) Claimant has waived or was estopped from pursuing her claims, by virtue of her knowledge of and acquiescence to the transactions in her account; (9) Claimant did not rely, reasonably or otherwise, on any misleading matters, statements, or omissions attributable to either of Respondents; (10) Respondents, individually and jointly, treated Claimant in accordance with the standard of care appropriate for similarly situated broker-dealers and registered principals; and (11) Claimant's claims were barred by the statute of limitations governing federal securities law claims, to the extent same were alleged, and the doctrine of laches or the statute of limitations may bar Claimant's state law claims.

RELIEF REQUESTED

Claimant, Carolyn J. Whisenant, requested an award for: compensatory damages of at least \$26,133.63; punitive damages; interest; and attorneys fees.

Respondents, Summit Brokerage Services Incorporated and Richard L. Parker, Jr., requested that the Statement of Claim asserted against them be dismissed and that they be awarded their costs, attorneys' fees, and forum fees and member surcharges assessed against them.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 9, 1997, after he was already assigned to this case, Arbitrator Gary P. Barket, Esquire was reclassified from a public arbitrator to an industry arbitrator. The parties did not object and, at the hearing, accepted the panel composed of one public arbitrator and two industry arbitrators.

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 the 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. Summit Brokerage Services Incorporated and Richard L. Parker, Jr. are jointly and severally liable for and shall pay Carolyn J. Whisenant compensatory damages in the amount of \$21,534.39.
2. Summit Brokerage Services Incorporated and Richard L. Parker, Jr. are jointly and severally liable for and shall pay Carolyn J. Whisenant interest in the amount of \$2,962.24.
3. Summit Brokerage Services Incorporated and Richard L. Parker, Jr. are jointly and severally liable for and shall pay Carolyn J. Whisenant attorney's fees in the amount of \$12,936.00. In deciding to award attorneys' fees, the undersigned arbitrators considered the pleadings, the testimony and the evidence as well as the Arkansas Securities Act, the legal authority provided by Carolyn J. Whisenant.
4. 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 and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300 and there were three (3) hearing sessions x \$400 = \$1,800 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$100 and shall retain as forum fees the hearing session deposit of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Carolyn J. Whisenant.

Pursuant to § 10333 of the Code, Summit Brokerage Services Incorporated is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$200.

Summit Brokerage Services Incorporated is liable for and shall pay the NASD Regulation, Inc. Office

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of Dispute Resolution forum fees in the amount of \$1,400.

Summit Brokerage Services Incorporated is liable for and shall reimburse Carolyn J. Whisenant for her hearing session deposit in the amount of \$400.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Richard L. Parker, Jr.

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

Concurring Arbitrators' Signatures

Larry W. Burks, Esquire

Larry W. Burks, Esquire

Chairperson

Public Arbitrator

August 28, 1997

• Dated:

Gary P. Barket, Esquire

Gary P. Barket, Esquire

Panelist

Industry Arbitrator

August 13, 1997

Dated:

Clifton J. Ladd

Clifton J. Ladd

Panelist

Industry Arbitrator

August 11, 1997

Dated:

For NASD use only:

Date Award was served on the parties: August 29, 1997