

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Mary Louise Sauls

Claimant,

v.

Case Number 96-01995

Sutro & Co. and Hunter A. Sauls, Jr.

Respondents.

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Sutro & Co.

Cross-Claimant,

v.

Case Number 96-01995

Hunter A. Sauls, Jr.

Cross-Respondent.

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## **REPRESENTATION OF PARTIES**

Claimant Mary Louise Sauls ("Claimant") was represented by Ronald M. Greenspan, Esq. of The Law Offices of Ronald M. Greenspan located in Santa Fe, New Mexico and Robert J. Downing, Esq. of Downing & Associates located in Santa Fe, New Mexico.

Respondent and Cross-Claimant Sutro & Co. ("Respondent Sutro") was represented by Michael J. Meehan, Esq. of Meehan & Associates located in Tucson, Arizona.

Respondent and Cross-Respondent Hunter A. Sauls, Jr. ("Respondent Hunter Sauls") appeared pro se.

## **CASE INFORMATION**

The Statement of Claim was filed on or about May 8, 1996.

Claimant's Submission Agreement was signed on May 8, 1996.

Respondent Sutro's Statement of Answer; Motion to Transfer Venue; Motion to Dismiss; and Motion to Stay was filed on or about July 11, 1996.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from Respondent Sutro.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer or signed Submission Agreement from Respondent Hunter Sauls.

Respondent Sutro's Cross-Claim was filed on or about March 6, 1997.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer to Respondent Sutro's Cross-Claim from Respondent Hunter Sauls.

Claimant's Response to Motion to Transfer Venue; Motion to Dismiss; and Motion to Stay was filed on or about August 8, 1996. Sutro's Reply to Claimant's Response to Motion to Transfer Venue; Motion to Dismiss; and Motion to Stay was filed on or about August 19, 1996. Claimant's Surreply was filed on or about August 30, 1996. Sutro's Response to Claimant's Surreply was filed on or about September 28, 1996. Claimant's Reply to Sutro's Response to Claimant's Surreply was filed on or about September 30, 1996.

Claimant's Memorandum in Support of Claimant's Demand for Punitive Damages, Attorneys' Fees and Costs with exhibits and supporting authorities was filed on or about February 4, 1997. Claimant's Cost Bill Affidavit was filed on or about April 15, 1997. Respondent Sutro's Response in Opposition to Claimant's Demand for Punitive Damages, Attorneys' Fees and Costs was filed on or about April 15, 1997. Sutro's Memorandum of Law was filed on or about April 15, 1997.

### **HEARING INFORMATION**

The telephonic pre-hearing conferences were held on:

December 27, 1996 for one (1) session;  
February 7, 1997 for one (1) session; and  
March 4, 1997 for one (1) session.

The hearing was held on:

February 13, 1997 for two (2) sessions;  
February 14, 1997 for two (2) sessions;  
March 6, 1997 for two (2) sessions;

March 7, 1997 for two (2) sessions;  
March 10, 1997 for two (2) sessions;  
March 11, 1997 for two (2) sessions;  
March 12, 1997 for two (2) sessions;  
April 10, 1997 for two (2) sessions;  
April 11, 1997 for two (2) sessions;  
April 14, 1997 for two (2) sessions; and  
April 15, 1997 for two (2) sessions.

The hearing location was Albuquerque, New Mexico.

### CASE SUMMARY

Claimant alleged that she invested approximately \$243,173 with Respondent Sutro through its registered representative Respondent Hunter Sauls, who is Claimant's son. Claimant asserted that she is a 79 year old widow who had no securities investment expertise and was unsophisticated in securities investments and trading. Claimant alleged that she relied upon the reputations and representations of Respondents in permitting them to conduct her securities transactions on a discretionary basis. Claimant maintained that her claims against Respondents arose out of the churning of Claimant's brokerage accounts, the selection of unsuitable securities for trading, and other unlawful conduct of Respondents in the treatment of Claimant. Claimant contended that Respondents failed to invest her money appropriately, with frequent trading in puts, calls, speculative stock and on margin. Claimant asserted claims against Respondents, including: churning; fraud; negligence; breach of fiduciary duties; suitability; respondeat superior; and breach of contract.

Respondent Sutro denied all liability to Claimant in its Statement of Answer. Respondent Sutro alleged that Sutro was not responsible for any losses that occurred in Claimant's trust account because the trust was directed by the trustee, who was Respondent Hunter Sauls. Respondent Sutro contended that this matter was not arbitrable because Claimant's action is barred by the statute of limitations which is subject to judicial resolution. Respondent Sutro asserted that the Claimant had no standing to sue Respondent Sutro for the trust account because a beneficiary of a trust cannot sue a third party if the trustee is available to bring such an action. Respondent Sutro maintained that the Claimant was estopped from bringing this action because Claimant received confirmation and monthly statements of all trading and signed letters stating that she was aware of the risks.

In its Cross-Claim, Respondent Sutro asserted that it has been exposed to claims for monetary damages and forced to incur substantial attorney fees and costs in defense of Claimant's claims. Respondent Sutro contended that during the course of this proceeding, Respondent Hunter Sauls

testified that he forged his mother's signature and deceived both his mother, the Claimant, and Respondent Sutro with respect to an October 1992 transfer of assets from the trust account to his own personal account. Respondent Sutro alleged that it was uncertain whether a formal written trust was executed by Claimant, and that Respondent Hunter Sauls failed to disclose to Respondent Sutro that the existence of a trust was in question. Accordingly, Respondent Sutro made claims against Respondent Hunter Sauls, including: common law fraud; negligent misrepresentation; violations of the Arizona Racketeering Act; breach of fiduciary duty; and indemnification and contribution.

### **RELIEF REQUESTED**

Claimant requested an award against Respondents as follows: for excessive commissions in the approximate sum of \$54,470; for margin interest in the approximate sum of \$7,964; for out-of-pocket losses as a result of the Respondents' churning in the approximate sum of \$180,933; for the investment losses by as a result of the failure to manage Claimants' accounts in a prudent manner in the approximate sum of \$54,517; punitive damages; fair and reasonable attorney fees and interest on these claims, together with the costs and disbursements of this proceeding.

Respondent Sutro requested that the Claimant receive nothing for her claims, that it be awarded its attorneys' fees and costs, and for such further relief as the panel deems just and proper. In its Cross-Claim, Respondent Sutro requested a judgement against Respondent Hunter Sauls for compensatory damages in an amount to be shown by the evidence; for punitive damages; for attorney fees and costs; and for such other and further relief as the arbitration panel deems just.

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

Respondent Sutro's Motion to Stay, Motion to Transfer Venue and Motion to Dismiss were denied.

At the hearing, Claimant made an oral Motion to Bar Respondent Hunter Sauls from presenting any matter, arguments, or defenses at the hearing on the basis that Respondent Hunter Sauls failed to file an answer to the Statement of Claim. Pursuant to Section 10314(b)(2)(C) of the NASD Code of Arbitration Procedure (the "Code"), Claimant's Motion to Bar Respondent Hunter Sauls from presenting any matter, arguments, or defenses at the hearing was granted by the arbitrators.

At hearing, Respondent Sutro & Co. made an oral Motion to file a Cross-Claim against Respondent Hunter Sauls. Pursuant to Section 10328(b) of the Code, Respondent Sutro's Motion

to file the Cross-Claim against Hunter Sauls was granted. The arbitrators advised Respondent Sauls that he was not barred from presenting a defense with respect to the Cross-Claim.

Respondents Sutro & Co. and Hunter A. Sauls, Jr. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10301 of the Code, and having appeared at the hearing, are bound by the determination of the arbitration panel on all issues submitted.

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) Respondent and Cross-Claimant Sutro & Co. and Respondent and Cross-Respondent Hunter A. Sauls, Jr. are jointly and severally liable for and shall pay to Claimant Mary Louise Sauls compensatory damages in the amount of Two Hundred Eighteen Thousand Eight Hundred Thirty Seven Dollars and No Cents (\$218,837.00), plus interest at the rate of 8.5% which shall begin to accrue from the date of this award and shall continue to accrue until the date this award is paid in full;
- (2) Respondent and Cross-Claimant Sutro & Co. and Respondent and Cross-Respondent Hunter A. Sauls, Jr. are jointly and severally liable for and shall pay to Claimant Mary Louise Sauls the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00) for her attorney fees and costs incurred in this matter. The panel based its authority for the award of attorney fees and costs on Claimant's Memorandum in Support of Claimant's Demand for Punitive Damages, Attorney Fees and Costs;
- (3) Respondent and Cross-Claimant Sutro & Co. shall reimburse Claimant Mary Louise Sauls for the NASD non-refundable filing fee incurred in connection with the filing of this action which is the amount of Two Hundred Dollars and No Cents (\$200.00);

- (4) Respondent and Cross-Respondent Hunter A. Sauls, Jr. is separately and additional liable for and shall pay to Claimant Mary Louise Sauls punitive damages in the amount of Six Hundred Fifty Six Thousand Five Hundred Dollars and No Cents (\$656,500.00). The panel based its authority for the award of punitive damages on Claimant's Memorandum in Support of Claimant's Demand for Punitive Damages, Attorney Fees and Costs;
- (5) Respondent and Cross-Respondent Hunter A. Sauls, Jr. is liable for and shall pay to Respondent and Cross-Claimant Sutro & Co. compensatory damages in the amount of Three Hundred Eighteen Thousand Eight Hundred Thirty Seven Dollars and No Cents (\$318,837.00), plus all NASD filing fees reimbursed by Sutro & Co. to Claimant Mary Louise Sauls which is the amount of Two Hundred Dollars and No Cents (\$200.00); and
- (6) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby dismissed in their entirety with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing session before a single arbitrator. There were three (3) pre-hearing sessions x \$300 = \$900 in forum fees. There were twenty-two (22) hearing sessions x \$750 = \$16,500 in forum fees. Total forum fees = \$17,400. Pursuant to §10332(b) of 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Sutro & Co.'s member surcharge in the amount of \$350. Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Sutro & Co.'s postponement deposit in the amount of \$750.

Pursuant to §10332(c) of the Code, Respondents Sutro & Co. and Hunter A. Sauls, Jr. are jointly and severally liable for and shall pay all forum fees incurred in this matter which is the amount of \$17,400. Pursuant to §10332(c) of the Code, Sutro & Co. is additionally liable for the non-

refundable filing fee in the amount of \$250 assessed in connection with the filing of its Cross-Claim.

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

Concurring Arbitrators' Signatures

\s\ Barry H. Barnett, Esq.

Barry H. Barnett, Esq.  
Chairperson  
Public Arbitrator

April 25, 1997

Dated:

\s\ Carl E. Gutman

Carl E. Gutman  
Panelist  
Public Arbitrator

April 26, 1997

Dated:

\s\ Richard W. Arms, Jr.

Richard W. Arms, Jr.  
Panelist  
Industry Arbitrator

April 25, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: April 28, 1997