

## NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

John L. & Esther S. Bala

96-03064

Name of Respondent

Smith Barney Inc.

### REPRESENTATION

Claimants John L. & Esther S. Bala ("claimants") appeared pro se.

For respondent Smith Barney Inc. ("respondent") appeared Linda R. Alpert, Esq., First Vice President and Associate General Counsel for respondent.

### CASE INFORMATION

Statement of Claim was filed on: July 15, 1996.

Claimants' Submission Agreement was signed on: July 12, 1996.

Statement of Answer was filed by respondent on: September 6, 1996.

Respondent's Submission Agreement was signed on: September 6, 1996.

### HEARING INFORMATION

Hearing Date/Sessions: August 5, 1997 - 2 sessions

The hearings were conducted at the offices of NASD Regulation located in Boston, Massachusetts.

### CASE SUMMARY

Claimants alleged that Mrs. Bala had been actively trading with respondent for more than two years and had traded with other brokerage houses since 1989. Claimants maintained that, although they complied with respondent's rules concerning margin and equity and signed all required documents which dealt with risk, in late April 1996, their trading privileges were

interrupted without notice or reason. Claimants contended that, as a result of respondent's actions, highly profitable trades were not executed and financial access to their funds was suspended. Claimants also contended that, after trying to ascertain why their trading privileges were suspended and trying to comply with respondent's requests, respondent advised them that it no longer wanted their business. In addition, claimants alleged that respondent discriminated against Mrs. Bala because of her gender.

Respondent alleged that, in or about August 1994, Mrs. Bala opened an account with respondent and that, in October 1994, pursuant to Mrs. Bala's request, Mr. Bala was added to the account. Respondent contended that the Client Agreement signed by claimants provided it with the authority to demand payment of margin debt at any time and the right to impose stringent margin requirements. Respondent maintained that, from the time the account was opened, claimants engaged in a pattern of actively trading large positions on margin and that, by the end of March 1996, the average debit balance was -\$227,526.00. In addition, respondents alleged that the managers who supervised claimants' account initiated several discussions with claimants regarding the frequency of trades, expense, leverage, returns expected by claimants from the account and, the risks associated with the trading patterns employed by claimants.

Respondents maintained that, during 1995, claimants' account was frequently forced into liquidations to meet margin calls and that, although claimants and their broker were cautioned to slow down the trading, claimants refused. Respondents further maintained that, because of high levels of trading activity, high margin debit balances and steadily increasing commissions as a percentage of the average equity, claimants' account had to be moved to the 50% equity level. In addition, respondents alleged that, on or about April 30, 1996 after claimants refused to heed respondent's advice of raising the equity level to 50% and to moderate the trading, claimants' account was restricted to liquidating trades. Respondent denied that claimants were asked to close or transfer their account.

Respondent also alleged that, although claimants placed liquidating orders for their account, claimants never asked respondent to place the trades which claimants contended would have been placed but for the restrictions. Moreover, respondent maintained that it's decision to restrict the trading in claimants' account to liquidating orders was reasonable considering claimants' reduced financial circumstances, the previous year's trading losses and the significant commissions generated. Respondent further maintained that it's decision had nothing to do with Mrs. Bala's gender.

### **RELIEF REQUESTED**

Claimants requested actual damages in the amount of \$63,000.00. In addition, claimants requested their account close-out costs and the costs incurred to open new accounts.

Respondent requested that all claims be dismissed with costs assessed against claimants.

### OTHER ISSUES CONSIDERED & DECIDED

Although Esther Bala did not appear at the hearing, John Bala declared that he wanted the case to proceed. Respondent, upon learning that Esther Bala was not present, moved to dismiss or, in the alternative, postpone the hearing. The panel took the motion under advisement pending the completion of claimants' case.

Upon completion of claimants' case, presented by John Bala pro se, respondent moved to dismiss the claim on the grounds that claimants had not proved a prima facie case. The panel, after due deliberation, decided to grant respondent's motion.

**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. All claims against respondent are hereby dismissed in their entirety.
2. Although Mr. Bala presented a cogent and well-considered argument, he did not prove that respondent breached any duty to either himself or his wife regarding their joint account. Respondent had advised claimants in writing of its concerns about the heavy trading activity in their account. When respondent placed certain restrictions on the account and claimants ignored them, respondent began to refuse to execute the trades claimants claimed they requested. Although testimony was elicited from the broker that trades were requested, he also testified that he advised claimants almost immediately that respondent would not execute the trades. Instead of going elsewhere to complete the trades, claimants threatened legal action. Furthermore, claimants failed to prove that respondent's actions were gender-based or amounted to sexual discrimination. Nor did claimants prove damages. Although they alleged damages arising from unexecuted trades, they submitted no proof of said damages. Accordingly, respondent's motion to dismiss is hereby granted with prejudice.

## **FORUM FEES**

**Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has determined that NASD Regulation shall retain the \$150.00 non-refundable filing fee and the \$300.00 member surcharge and has assessed the following forum fees:**

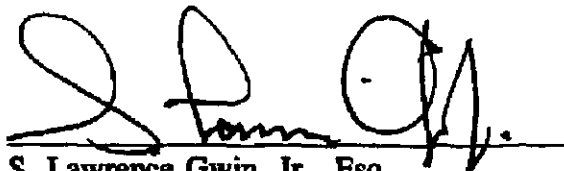
**2 hearing sessions x \$500.00 = \$1000.00**

1. Claimants be and hereby are jointly and severally liable for the sum of \$500.00, representing one-half of the total amount of forum fees assessed. Claimants

previously deposited \$500.00 and, therefore, owe nothing in forum fees.

2. Respondent be and hereby is liable for and shall pay to NASD Regulation the sum of \$500.00, representing one-half of the total amount of forum fees assessed.

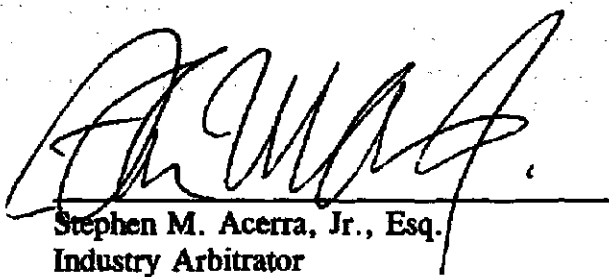
Arbitrators' Signatures



S. Lawrence Gwin, Jr., Esq.  
Chairperson-Public Arbitrator



Mary F. Sprogell  
Public Arbitrator



Stephen M. Acerra, Jr., Esq.  
Industry Arbitrator

Date of Decision: October 10, 1997