

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

William T. & Helen W. Sutherland  
Sutherland Family Trust

96-04311

Name of Respondents

State Capital Markets Corporation  
Vijay A. Sud

REPRESENTATION

Claimants William T. and Helen Sutherland, individually ("Sutherlands"), and as co-trustees of the Sutherland Family Trust ("Trust") were represented by Robert B. Reno, Esq., Joseph A. Meo, Esq., Meo & Associates, Bala Cynwyd, PA.

Respondents State Capital Markets Corporation ("SCMC") and Vijay Sud ("Sud") did not appear.

CASE INFORMATION

The Statement of Claim was filed September 27, 1996.

Claimants Sutherlands and the Trust (collectively "Claimants") signed a Uniform Submission Agreement September 17, 1996.

SCMC's Statement of Answer was filed November 26, 1996.  
SCMC did not file an executed agreement to arbitrate.

Sud's Statement of Answer and Crossclaim was received February 13, 1997.  
Sud's Uniform Submission Agreement was signed December 16, 1996.

HEARING INFORMATION

Hearing Date/Sessions: September 29, 1997/one session

Hearing Location: Doubletree Hotel  
Philadelphia, PA

CASE SUMMARY

Claimants alleged that Sud and SCMC (collectively "Respondents") are liable to Claimants for violations of Section 10(b) of the Securities and Exchange Act of 1934 ("Act") and Rule 10b-5 thereunder, Section 20 of the Act; breach of their fiduciary duties to Claimants; negligence; common law fraud and negligent misrepresentations; inadequate supervision; failure to follow Claimants' orders regarding margin trading; excessive trading or churning; and unauthorized trading. Claimants alleged that Respondents were

negligent and/or intentional in their failure to properly, correctly and adequately inquire into the suitability of the investments recommended to Claimants, for example, by reporting that Claimants' net worth was \$500,000.00 when it was, in fact, approximately \$250,000.00. Claimants alleged that Respondents failed to inquire into the specific terms of the Sutherland Family Trust with respect to limitations on investments but still assured Claimants, repeatedly, that the investments recommended were safe and suitable for Claimants and that some recommendations were more suitable than ones currently held by Claimants. Claimants further alleged that Respondents executed transactions without prior approval of Claimants and in an excessive manner for the purpose of generating commissions for themselves. Claimants asserted that SCMC had a duty to adequately supervise Sud in the management of Claimants' accounts. Claimants also alleged that due to their inexperience and lack of sophistication, they reasonably relied upon Respondents' reassurances, misrepresentations and omissions of material fact. Therefore, Claimants alleged that Respondents are liable for their acts and omissions.

In their Statement of Answer, Respondent SCMC denied all allegations of wrong-doing as asserted in the Statement of Claim. SCMC maintained that virtually all activity complained of occurred prior to Claimants opening an account with SCMC and for which they are not responsible. SCMC also maintained that all transactions conducted by Claimants through SCMC were authorized and for which Claimants received written confirmations. SCMC maintained that Claimants did not raise any complaints with SCMC and it would appear that any losses allegedly suffered by Claimants were the result of market activity and Claimants' market strategy. SCMC raised the affirmative defenses of a failure to state a claim upon which relief may be granted; assumption of risk; a failure to plead churning with requisite particularity; laches; ratification; proximate cause; failure to mitigate; contributory negligence; failure to plead fraud with required specificity; as well as waiver and estoppel.

Respondent Sud, in his Statement of Answer, denied allegations of wrong-doing as asserted in the Statement of Claim. Sud maintained that Claimants are sophisticated investors with twenty years investing experience and a net worth in excess of \$500,000.00. Sud further maintained that Claimants indicated on new account forms that their investment objectives included growth and income and that they had previously bought securities on margin. Sud contended that before meeting Sud, Claimants had been investing in penny stocks and other risky investments and that Sud assisted them in obtaining a more balanced stock portfolio. Sud maintained that he made no misrepresentations to Claimants, did not breach any duties to Claimants, did not fail to follow Claimants' directions regarding margin, did not churn Claimants' accounts or engage in unauthorized trading. In addition, Sud maintained that Claimants frequently purchased stocks on margin against Sud's advice. Sud also raised the affirmative defenses of authorization and ratification; assumption of risk; and Claimants' failure to exercise necessary care or due diligence in the handling of their own affairs.

Respondent Sud also filed a Crossclaim against Respondent SCMC for a failure to pay Sud the commissions he earned for the month of August 1996 in the amount of \$16,444.55 and for contribution and indemnification for any liability to Claimants.

#### **RELIEF REQUESTED**

Claimants requested \$41,187.00 in actual damages; \$3,700 interest; \$20,200.00 in attorney's fees; \$650.00 in filing and forum fees paid to the NASD Regulation; and \$25,000.00 in punitive damages for a total of \$90,737.00.

SCMC requested that the claims alleged in the Statement of Claim be denied and all costs assessed to Claimants; including attorney's fees.

Sud requested that the Statement of Claim be denied and that in the Crossclaim that SCMC be ordered to pay commissions of \$16,444.55, plus interest and attorney's fees pursuant to New York statute, as well as liquidated damages and that all costs of this arbitration be assessed to SCMC.

#### OTHER ISSUES CONSIDERED & DECIDED

The parties in attendance at the hearing 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.

Respondent SCMC did not file with the NASD Regulation a properly executed submission to arbitration but is required to submit an arbitration pursuant to Rule 10301 of the NASD Regulation Code of Arbitration Procedure ("Code"), and thus is bound by the rulings and orders of the panel.

#### 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 Respondent Vijay Sud is liable to and shall pay to Claimants \$20,378.47 inclusive of interest.
2. That Respondents Vijay Sud and State Capital Market Corporation are jointly and severally liable to and shall pay to Claimants \$44,858.53, inclusive of interest, filing fee and attorney's fees.
3. That the claim for punitive damages is denied.
4. That Respondents Vijay Sud and State Capital Market Corporation are jointly and severally liable to and shall reimburse Claimants for the \$500.00 Forum Fee deposit previously submitted to the NASD Regulation.
5. That the Crossclaim of Respondent Sud against SCMC is denied.
6. That any and all relief not specifically addressed herein is denied.

#### OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent State Capital Market Corporation is assessed a member surcharge of \$300.00.

#### FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

1 session x \$500.00 = \$500.00

Forum Fees are assessed to Respondents SCMC and Vijay Sud, jointly and severally. Respondents SCMC and Vijay Sud are to receive credit for the \$500.00 hearing session deposit submitted by Claimants and ordered to be reimbursed directly to Claimants in the award above, leaving no further Forum Fees due.

DATE

10/9/97

CONCURRING ARBITRATORS' SIGNATURES

James J. McCann

James J. McCann, Presiding  
Public Arbitrator

Harold P. Starr  
Harold P. Starr  
Public Arbitrator

Richard Wayne Raffety  
Richard Wayne Raffety  
Industry Arbitrator

Date Decision Served by NASD Regulation:

October 21, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

10/8/97

James J. McCann, Presiding  
Public Arbitrator



Harold P. Starr  
Public Arbitrator

Richard Wayne Raffety  
Industry Arbitrator

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10/9/97

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