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AUG 8 1990

MSRB

In the Matter of the Arbitration Between

Claimant,

v.

SMITH BARNEY, HARRIS UPHAM & COMPANY, INC.
and ANDREW MOLOT,

Respondents.

AWARD
MS 88-104

CASE SUMMARY

Claimant sought to recover damages from Respondents' alleged intentional and/or reckless misrepresentations or omissions of material facts in connection with the purchase and sale of municipal bonds by Claimant. Claimant also alleged common law fraud and violations by Respondents of Section 10(b) of the Securities and Exchange Act, 15 U.S.C. Sec. 78j(b) and the Racketeer Influenced and Corrupt Organization Act ("RICO"), 28 U.S.C. Sec. 1331 et seq. Claimant further alleged a marked deviation by Respondents from the standard of care required of stockbrokers and a stockbrokerage firm, and a breach of fiduciary duty owed by Respondents to Claimant in connection with their recommendations of municipal bond purchases and sales, including violations by Respondents of Rule 405 of the New York Stock Exchange, the NASD's Rule of Fair Practice, and MSRB rule G-19. Claimant also sought punitive damages, attorneys fees, and out of pocket expenses.

Respondents argued, inter alia, that, when Claimant opened her account with Respondents, she stated that she was interested in purchasing high-yield tax-exempt bonds and that she gave Respondent Molot sufficient information about her objectives and financial background to demonstrate that such purchases would be suitable. Respondents alleged that every purchase in her account was authorized and was consistent with her stated

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objective. Respondents noted that several of the bonds purchased by Claimant were backed, in whole or in part, by a corporation that later filed for bankruptcy and, as a result, Claimant's bonds declined in value. Respondents alleged that Claimant, through false and misleading statements in her Statement of Claim, sought to disavow these purchases and shift the loss she suffered to Respondents. Respondents argued that the bonds were not misrepresented to Claimant and were not unsuitable on the information she supplied to Respondents.

Respondents also alleged in a counterclaim for costs and attorneys fees that Claimant signed an agreement to arbitrate all disputes arising from her account with Respondents and that she breached that agreement by filing an action in the United States District Court for the Southern District of New York.

Claimant argued that Respondents and Claimant entered into a stipulation withdrawing the District Court action, wherein each party agreed to bear their own costs and attorneys fees for the District Court action. Claimant alleged that the action was brought before the District Court in good faith.

RELIEF REQUESTED

Claimant requested that Respondents be ordered to pay to Claimant \$121,395.00 for loss of principal; \$10,000.00 for lost wages due to physical and mental stress; \$35,653.50 for psychological damages (aggravated stress and anxiety); all of which, when trebled under the RICO statute, totals \$501,145.50; \$5,000,000 for punitive damages; \$1,388,786.40 for attorneys fees; \$6,000.00 for expert witness fees; \$1,000 per hearing session (\$3,000) for filing fee; and \$3,500 for costs and disbursements. Claimant's total claim was \$6,902,581.90. Claimant also requested that Respondents counterclaim for costs and attorneys fees in the District Court action and in this matter be dismissed.

Respondents requested that Claimant's claim be dismissed and that Claimant be ordered to pay to Respondents costs and attorneys fees in the District Court action and in this matter.

AWARD

On May 24, 1989 and April 23 through 25, 1990, in New York, New York, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators

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signed by Claimant on August 3, 1988 (and filed with the MSRB on November 3, 1988) and by Respondents on December 20, 1988. The arbitrators, having considered the pleadings, the testimony and the evidence presented at the hearings, have determined in full and final resolution of the issues submitted for determination that:

Respondents shall be jointly and severally liable, and shall pay to Claimant \$57,111 in actual damages and \$50,000 in punitive damages for a total of \$107,111 in damages;

all of Claimant's other claims, including those for lost wages, psychological damage and RICO, shall be dismissed in their entirety;

Respondents' counterclaims shall be dismissed in their entirety;

each party shall bear its own attorneys fees. To the extent that Claimant has already paid \$13,500 in attorneys fees, it is the intent of the panel that \$13,500 not be included in the dollar amount upon which the contingency fee for Claimant's attorney is calculated, and that the dollar amount used to calculate the contingency fee for Claimant's attorney be \$93,611; and

the panel directs the MSRB to refer Respondents Smith Barney, Harris Upham & Company, Inc., its North Miami Beach, Florida office, and Andrew Molot to the National Association of Securities Dealers, Inc. for investigation into their activities regarding Claimant's account, including but not limited to any activity regarding the signing by Respondents of Claimant's name to certain forms, such as the W-9 and other forms, and the mailing by Respondents, for fraudulent tax purposes and other improper purposes, of blank confirmation slips to Claimant.

Pursuant to MSRB rule A-16, section (2), the MSRB shall retain Claimant's \$1,000 arbitration deposit and Respondent Smith

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Barney, Harris Upham & Co. shall pay to the MSRB \$3,000 as forum fees. And the MSRB shall retain all adjournment fees paid by the parties pursuant to section 20(b) of the Arbitration Code.

Public Arbitrator

Industry Arbitrator

Public Arbitrator

Industry Arbitrator

Public Arbitrator

Dated: AUG 3 1990

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AUG 3 1990

21.3.1.3.

STATE OF
COUNTY OF

ss.:

On this day of , 19 , before me personally
appeared to me known and known to me to be
the individual described in and who executed the foregoing
instrument and he duly acknowledged to me that he executed the
same.

[Signature]
Notary Public
New Jersey
My Commission Expires July 7, 1991

STATE OF
COUNTY OF

New Jersey
Passaic

ss.:

On this *25th* day of *July*, 19 *90*, before me personally
appeared to me known and known to me to be the
individual described in and who executed the foregoing instrument
and he duly acknowledged to me that he executed the same.

[Signature]
#2

CATHERINE R. ABITA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 7, 1991

STATE OF
COUNTY OF

Virginia
Fairfax

ss.:

On this *30th* day of *July*, 19 *90*, before me personally
appeared to me known and known to me to be the
individual described in and who executed the foregoing instrument
and he duly acknowledged to me that he executed the same.

[Signature]

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STATE OF *New York*
COUNTY OF *Hudson*

SS.:

M.S.B.

On this *1st* day of *August*, 19*90*, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

LARRIE CONTINANZI
Notary Public, State of New York
No. 4867355
Qualified in Nassau County
Commission Expires August 18, 19*92*

Larrie Continanzi

STATE OF *New York*
COUNTY OF *Hudson*

SS.:

On this *27* day of *July*, 19*90*, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

THOMAS F. EGAN
Notary Public, State of New York
No. 4900596
Qualified in Westchester County
Commission Expires June 11, 19*94*

Thomas F. Egan

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MSRB

Barney, Harris Upham & Co. shall pay to the MSRB \$3,000 as forum fees. And the MSRB shall retain all adjournment fees paid by the parties pursuant to section 20(b) of the Arbitration Code.

Robert B. Weintraub 7/24/90
Robert B. Weintraub

8/1/90 Theodore Kimelman

Gerard D. Haertel 7/25/90
Gerard D. Haertel

Richard L. Tauber
Richard L. Tauber

James E. Lebherz 7/30/90
James E. Lebherz

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Dated: AUG 8 1990

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