
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Martha-Ann Brehaut-Walker

Case Number: 00-00372

Names of the Respondents

The Ohio Company

n/k/a Fifth Third Securities

Smith Barney, Inc.

n/k/a Salomon Smith Barney, Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Martha-Ann Brehaut-Walker ("Walker"), hereinafter referred to as "Claimant": T. Geoffrey Heekin, Esq., Heekin, Malin & Wenzel, Jacksonville, Florida.

For Respondent The Ohio Company n/k/a Fifth Third Securities ("TOC"): Joseph M. Callow Jr., Esq., Keating, Muething & Klekamp, Cincinnati, Ohio.

For Respondent Smith Barney, Inc. n/k/a Salomon Smith Barney, Inc. ("SSB"): Patricia M. Christiansen, Esq., Boose Casey Ciklin Lubitz Martens, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 17, 2000.

Claimant signed the Uniform Submission Agreement: January 23, 2000.

Statement of Answer filed by Respondent TOC on or about: April 25, 2000.

Respondent TOC signed the Uniform Submission Agreement: July 7, 2000.

Statement of Answer filed by Respondent SSB on or about: April 20, 2000.

Respondent SSB signed the Uniform Submission Agreement: April 20, 2000.

Motion for Summary Judgment filed by Respondent TOC: December 20, 2004.

Memorandum in Opposition to Respondent TOC's Motion for Summary Judgment: January 20, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of contract; 2) violation of rules, regulations, customs and usages in the securities industry; 3) common law fraud; 4) intentional and/or negligent supervision; 5) negligence; 6) breach of fiduciary duty; 7) unsuitability; and 8) unauthorized trading. The causes of action relate to Claimant's margin account and unspecified government mutual bond funds.

Unless specifically admitted in their Answers, Respondents TOC and SSB denied the allegations made in the Statement of Claim, and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested from Respondent SSB: 1) compensatory damages of approximately \$54,000.00; 2) interest in the amount of approximately \$22,950.00; 3) costs; 4) attorneys' fees; and, 5) such other relief as the Panel deemed fair and appropriate. Claimant requested from Respondent TOC: 1) compensatory damages of approximately \$89,000.00; 2) interest in the amount of approximately \$31,500.00; 3) costs; 4) attorneys' fees; and, 5) such other relief as the Panel deemed fair and appropriate.

Respondents SSB and TOC requested that the Panel dismiss the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On February 11, 2005 the Panel issued an order that denied Respondent TOC's Motion for Summary Judgment.

On or about September 21, 2005, Claimant notified NASD Dispute Resolution of the settlement of its case against Respondent SSB in this matter. Accordingly, the Panel made no determination as to Respondent SSB.

During the evidentiary hearing for this matter, Claimant requested that the Panel include an award of margin interest.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, evidence and testimony presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent TOC is found liable for unsuitable trading and shall pay to Claimant compensatory damages in the amount of \$89,000.00, plus margin interest in the amount of \$53,200.00.

Respondent TOC is found not liable on all other causes of action in the Statement of Claim.

Respondent TOC is to pay Claimant's expert witness fees in the amount of \$4250.00.

Any and all requests for relief not specifically addressed herein, including Claimant's request for attorneys' fees, are denied.

FEEES

Pursuant to the Code, the following fees are assessed:

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$ 300.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent TOC is a party and a member firm.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

Accordingly, Respondent SSB is a party and a member firm.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 8 – May 11, 2001 adjournment by Claimant = \$ 1,125.00

The Panel has assessed the total adjournment fee in the amount of \$1,125.00 to Claimant.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 5,625.00
Pre-hearing conferences:	
September 19, 2000	1 session
May 22, 2002	1 session
September 8, 2003	1 session
September 17, 2004	1 session
December 10, 2004	1 session

Four (4) Hearing sessions with the Panel @ \$1,125.00/session = \$ 4,500.00
Hearing Dates: September 28, 2005 2 sessions
September 29, 2005 2 sessions

Total Forum Fees = \$10,125.00

The Panel has assessed \$6,750.00 of the forum fees to Claimant.
The Panel has assessed \$3,375.00 of the forum fees to Respondent TOC.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$6,750.00
Total Fees	= \$8,175.00
Less payments	= \$5,925.00
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent TOC is solely liable for:

Member Fees	= \$3,100.00
Forum Fees	= \$3,375.00
Total Fees	= \$6,475.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution	= \$1,875.00

Respondent SSB solely liable for:

Member Fees	= \$3,100.00
Total Fees	= \$3,100.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Richard Thornburg, Esq.
Thomas H. McAvoy
John W. Platt

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

NASD Dispute Resolution

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Concurring Arbitrators' Signatures

/s/

Richard Thornburg, Esq.
Public Arbitrator, Presiding Chairperson

October 7, 2005

Signature Date

/s/

Thomas H. McAvoy
Public Arbitrator

October 5, 2005

Signature Date

/s/

John W. Platt
Non-Public Arbitrator

October 4, 2005

Signature Date

October 10, 2005

Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Richard Thornburg, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas H. McAvoy
Thomas H. McAvoy
Public Arbitrator

10-5-2005
Signature Date

John W. Platt
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signature

Richard W. Thornburg

Richard Thornburg, Esq.
Public Arbitrator, Presiding Chairperson

10.07.05

Signature Date

Thomas H. McAvoy
Public Arbitrator

Signature Date

John W. Platt
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Richard Thornburg, Esq.
Public Arbitrator, Presiding Chairperson

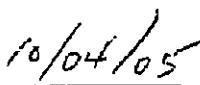
Signature Date

Thomas H. McAvoy
Public Arbitrator

Signature Date



John W. Platt
Non-Public Arbitrator



Signature Date

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