

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Harvey Kahaner, M.D., (Claimant) vs. Salomon Smith Barney Inc. and John D. Halotek, (Respondents)

Case Number: 00-03796

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Harvey Kanaher, M.D., hereinafter referred to as "Claimant": Norman S. Zalkind, Esq., Zalkind, Rodriguez, Lunt & Duncan, Boston, MA.

Respondents, Salomon Smith Barney Inc. ("SSB") and John D. Halotek ("Halotek"), hereinafter collectively referred to as "Respondents": Susan E. Harkins, Esq., Director and Associate General Counsel, Salomon Smith Barney Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 28, 2000.

Amended Statement of Claim filed on or about: November 15, 2000.

Claimant signed the Uniform Submission Agreement: August 28, 2000.

Joint Statement of Answer filed by Respondents on or about: December 5, 2000.

SSB did not sign a Uniform Submission Agreement.

Halotek did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; breach of contract; failure to execute; and failure to supervise. Claimant's claim involved unspecified stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim on which relief can be granted; Claimant's claims are barred by the doctrines of waiver, estoppel, and ratification; Claimants' claims are barred by the applicable statute of limitations and/or laches; Claimant lacks standing to bring the claims alleged in this arbitration; the Statement of Claim should be dismissed for failure to join a necessary party; Claimant failed to mitigate his purported damages; the claims alleged are barred by the statute of frauds; the culpable conduct of Claimant contributed to

causing the damages alleged in the Statement of Claim and any recovery against Respondents must be proportionately reduced; Claimant had knowledge of and voluntarily assumed the risks incident to the matters of which he complains; and attorneys' fees may not be awarded in this arbitration.

RELIEF REQUESTED

Claimant requested compensatory damages in the approximate amount of \$300,000.00, plus interest, fees, and costs.

Respondents requested that the Statement of Claim be dismissed with costs assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents made a motion for a directed verdict at the completion of Claimant's case. The Panel deferred decision on said motion until the conclusion of the hearing.

SSB and Halotek did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the 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.

AWARD

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

1. Claimant's claims are hereby dismissed in their entirety.

2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Halotek's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Halotek must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Salomon Smith Barney Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$ 450.00	= \$ 450.00
Pre-hearing conference: June 22, 2001	1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: May 30, 2001	1 session

Seven (7) Hearing sessions x \$1,125.00		= \$7,875.00
Hearing Dates:	June 4, 2002	2 sessions
	June 5, 2002	2 sessions
	June 6, 2002	2 sessions
	June 7, 2002	1 session
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Total Forum Fees		= \$9,450.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund Due Claimant</u>	= \$1,125.00

2. SSB be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$9,450.00
<u>Total Fees</u>	= \$9,450.00
<u>Less payments</u>	= \$2,500.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$6,950.00

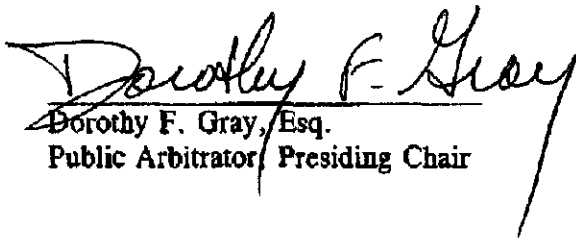
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Dorothy F. Gray, Esq.	-	Public Arbitrator, Presiding Chair
Lawrence D. McGovern	-	Public Arbitrator
Jerry P. DeNigris	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Dorothy F. Gray, Esq.
Public Arbitrator Presiding Chair

Signature Date

Lawrence D. McGovern
Public Arbitrator

Signature Date

Jerry P. DeNigris
Industry Arbitrator

Signature Date

July 12, 2008
Date of Service (For NASD office use only)

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Lawrence D. McGovern	-	Public Arbitrator
Jerry P. DeNigris	-	Industry Arbitrator

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Signature Date

Lawrence D. McGovern
Public Arbitrator

Signature Date


Jerry P. DeNigris
Industry Arbitrator

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July 12, 2002
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