

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

James P. Shoffner, Jr.

and

01-00012
Denver, Colorado

Name of Respondent

Salomon Smith Barney Inc.

REPRESENTATION OF PARTIES

James P. Shoffner, Jr. ("**Claimant**") was represented by Otto K. Hilbert, II, Esq., Robinson Waters & O'Dorisio, P.C., Denver, Colorado.

Salomon Smith Barney Inc. ("**Respondent**") was represented at the hearing by Jerry M. Santangelo, Esq., Neal Gerber & Eisenberg, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about January 5, 2001. Submission Agreement of Claimant James P. Shoffner, Jr. was signed on December 27, 2000.

Statement of Answer was filed by Respondent Salomon Smith Barney Inc. on or about April 6, 2001. Submission Agreement of Respondent Salomon Smith Barney Inc. was signed on July 16, 2001 by Eric L. Adler.

CASE SUMMARY

Claimant alleged that as an employee of Respondent he was required and induced to accept, in lieu of payment of his earned wages, restricted stock and non-qualified options in the common stock of the parent corporation of Respondent. It was alleged that upon the termination of his employment with Respondent, Claimant forfeited a substantial portion of such earned wages and the appreciation realized thereon. Claimant also alleged that Respondent has failed and refused to pay other benefits due and owed to him. Specifically, Claimant alleged that the terms of the Capital Accumulation Plan ("CAP") violated Colorado law. It was alleged that the actions of Respondent constituted: violations of the Colorado Wage Claim Act; conversion; breach of fiduciary duty; breach of covenant of good faith and fair dealing; and unjust enrichment.

Respondent denied the allegations set forth in the Statement of Claim. Specifically, Respondent stated that Claimant was a highly compensated, sophisticated financial consultant who fully understood the vesting/forfeiture provisions of CAP. Respondent further stated that Claimant received a refund of the contributions he made to the plan upon the termination of his employment.

RELIEF REQUESTED

Claimant requested an award as follows:

- a) Upon Count I, awarding Shoffner all his earned and unpaid wages pursuant to C.R.S. § 8-4-104, his attorney fees pursuant to C.R.S. § 8-4-114, and all other relief to which Shoffner is entitled under the Colorado Wage Claim Act;
- b) Upon Counts II, IV, V and VI, awarding Shoffner such actual, compensatory, consequential and incidental damages, including those damages constituting Shoffner's loss of Assets, loss of opportunity and loss of economic advantage, as are shown to have been proximately and directly caused by the wrongful conduct of the Respondent or for which it is legally responsible;
- c) Upon Count III, imposing a constructive trust upon the Assets to which Shoffner is entitled as a matter of law and/or equity, and awarding such further and supplemental equitable remedies necessary to enforce and resolve the constructive trust so imposed, including without limitation an order requiring Respondent, as trustee: (1) to make an accounting of all profits that have accrued from Shoffner's Assets since the date of Respondent's wrongdoing; (2) to disgorge such profits by paying Shoffner an amount equal thereto; (3) to convey to Shoffner legal title to his Assets; and (4) to award Shoffner his costs and reasonable attorney fees; or in the alternative to the foregoing remedies, affording Shoffner such damages, as demanded more specifically in paragraph (d) below, necessary to remedy the manner in and degree to which Respondent has been unjustly enriched by its retention of Shoffner's Assets;
- d) Upon Count III, and as an alternative to the relief demanded in paragraph (c), immediately above, awarding Shoffner such actual, compensatory, consequential and incidental damages, including those damages constituting Shoffner's loss of Assets, loss of opportunity and loss of economic advantage, as are shown to have been proximately and directly caused by the wrongful conduct of the Respondent or for which it is legally responsible;
- e) As an alternative to the relief demanded in paragraphs (b) through (d) above, awarding Shoffner equitable restitution against Respondent upon Counts II through VI;
- f) Upon Counts II and IV, awarding Shoffner exemplary damages against Respondent in an amount sufficient to punish the Respondent and to deter similar conduct in the future;
- g) Awarding Shoffner the costs he has incurred in this action, including expert witnesses fees and reasonable attorney fees in accordance with applicable law, together with pre-award, moratory and post-award interest in accordance with applicable law; and
- h) Awarding such other and further relief as the panel deems just, necessary and appropriate to remedy the harms inflicted by Respondent upon Shoffner.

Claimant's compensatory damages are believed to be \$117,815.00.

Respondent requested dismissal of the claims asserted in this matter.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are hereby dismissed in their entirety;
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief including punitive and/or exemplary damages, by any party hereto are denied with prejudice;
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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, the member firm is Salomon Smith Barney Inc.

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

Adjournment Fees

Adjournments during these proceedings:

November 13-15, 2001 hearing date adjournment resulting from the administrative stay of proceedings granted by NASD Dispute Resolution following the September 11, 2001 World Trade Center attack. = \$0.00

Forum Fees and Assessments

The Arbitration 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$2,250.00

Pre-hearing conferences:	July 16, 2001	1 session
	February 27, 2002	1 session

Three (3) Hearing sessions x \$1,125.00 = \$3,375.00

Hearing Dates:	June 18, 2002	2 sessions
	<u>June 19, 2002</u>	<u>1 session</u>

Total Forum Fees = \$5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to James P. Shoffner, Jr.
The Arbitration Panel has assessed \$2,812.50 of the forum fees to Salomon Smith Barney Inc.

Fee Summary

Claimant, James P. Shoffner, Jr., shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 2,812.50</u>
Total Fees	= \$ 3,112.50

<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

Respondent, Salomon Smith Barney Inc., shall be and hereby is liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 2,812.50
Total Fees	= \$ 7,412.50
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Reid A. Godbolt, Esq. - Public Arbitrator, Presiding Chair
Donald P. Shwayder, Esq. - Public Arbitrator
William A. Conklin - Industry Arbitrator

Concurring Arbitrators:

Reid A. Godbolt, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald P. Shwayder, Esq.
Public Arbitrator

Signature Date

William A. Conklin
Industry Arbitrator

Signature Date

Less payments **= \$ 1,425.00**

Balance Due NASD Dispute Resolution	= \$ 1,687.50
-------------------------------------	---------------

Respondent, Salomon Smith Barney Inc., shall be and hereby is liable for:

Member Fees = \$ 4,600.00

Forum Fees	- \$ 2,812.50
-------------------	----------------------

Total Fees	= \$ 7,412.50
-------------------	----------------------

Less payments **= \$ 4,600.00**

Balance Due NASD Dispute Resolution	= \$ 2,812.50
-------------------------------------	---------------

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Reid A. Godbolt, Esq. - Public Arbitrator, Presiding Chair

Donald P. Shwayder, Esq. - Public Arbitrator

William A. Conklin - Industry Arbitrator

Concurring Arbitrators:

Concurring Arbitrators:

Reid A. Godbolt, Esq.

Public Arbitrator, Presiding Chair

August 14, 2002
Signature Date

Signature Date

Donald P. Shwayder, Esq.

Public Arbitrator

Signature Date

William A. Conklin

Industry Arbitrator

Signature Date

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 2,812.50</u>
Total Fees	= \$ 7,412.50
<u>Less payments</u>	<u>= \$ 4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,812.50

All balances are due to NASD Dispute Resolution

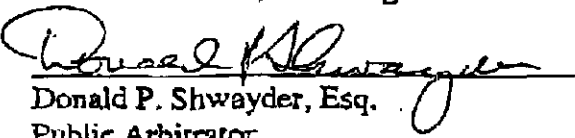
ARBITRATION PANEL

Reid A. Godbolt, Esq. - Public Arbitrator, Presiding Chair
Donald P. Shwayder, Esq. - Public Arbitrator
William A. Conklin - Industry Arbitrator

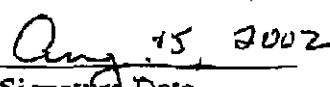
Concurring Arbitrators:

Reid A. Godbolt, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Donald P. Shwayder, Esq.
Public Arbitrator



Signature Date

William A. Conklin
Industry Arbitrator

Signature Date

NASD Dispute Resolution
Arbitration No. 01-00012
Award Page 5 of 5

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 7,412.50
Less payments	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Reid A. Godbolt, Esq. - Public Arbitrator, Presiding Chair
Donald P. Shwayder, Esq. - Public Arbitrator
William A. Conklin - Industry Arbitrator


Concurring Arbitrators:

Reid A. Godbolt, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald P. Shwayder, Esq.
Public Arbitrator

Signature Date



William A. Conklin
Industry Arbitrator

8-14-02

Signature Date