

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Joseph A. DiVito, Jr.

and

01-01292
Phoenix, Arizona

Name of Respondents

Salomon Smith Barney Inc.

REPRESENTATION OF PARTIES

Joseph A. DiVito, Jr. ("Claimant") was represented by Paul A. Conant, Esq., Galbut, Hunter & Conant, Phoenix, Arizona.

Salomon Smith Barney Inc. ("Respondent") was represented by H. Nicolas Berberian, Esq., Neal Gerber & Eisenberg, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about March 15, 2001. Amended Statement of Claim was filed on or about September 24, 2001. Response in Opposition to Respondent's Motion for Dismissal was filed on or about December 4, 2001. Submission Agreement of Claimant Joseph A. DiVito, Jr. was signed on March 14, 2001.

Respondent Salomon Smith Barney Inc.'s Answer and Counterclaim was filed on or about April 27, 2001. Motion for Rule to Show Cause why Claimant's Claims Should Not Be Dismissed for Failure to Comply With the NASD Code and the Panel's Order was filed on or about September 18, 2001. Respondent Salomon Smith Barney Inc.'s Answer to Amended Statement of Claim and Restatement of Counterclaim was filed on or about October 9, 2001. Reply in Support of Motion to Show Cause was filed on or about December 10, 2001. Respondent's Supplement to Motion for Rule to Show Cause was filed on or about January 22, 2002. Submission Agreement of Respondent Salomon Smith Barney Inc. was signed on April 27, 2001 by Robert J. Mandel.

CASE SUMMARY

Claimant alleged that he was involuntarily terminated by Respondent. Specifically, Claimant alleged that after a series of events over a period of several months he was forced to resign his position at Respondent.

Respondent denied the allegations set forth in the Statement of Claim and the Amended Statement of Claim. Respondent specifically stated that Claimant voluntarily resigned without any prior notice to join a competitor which paid him over \$300,000 in an upfront bonus in the form of a forgivable loan.

It was stated that the upfront bonus from the competitor far exceeded Claimant's interest in Smith Barney's Capital Accumulation Plan, which Claimant knowingly and voluntarily relinquished by deciding to resign.

RELIEF REQUESTED

In both the Statement of Claim and the Amended Statement of Claim, Claimant requested that the Arbitration Panel, order, award, adjudge and decree, in his favor, and against Respondent, the following:

1. Actual, compensatory, out of pocket and consequential damages, believed to be approximately \$65,000;
2. Treble unpaid wages, approximately (\$130,000);
3. Reasonable attorneys' fees and all costs associated with these proceedings, including an assessment of forum fees against Respondent; and
4. Such other or further relief as may be appropriate under the circumstances of the case.

In its Answer and Counterclaim, Respondent requested that the Arbitration Panel enter an Award in its favor and against Claimant:

1. Dismissing the Statement of Claim in its entirety, awarding Salomon Smith Barney its costs incurred in defending this action, including reasonable attorneys' fees and costs, and such other relief as the Arbitration Panel deems just and equitable; and
2. Finding Claimant liable on its Counterclaim and ordering:
 - a) an accounting with respect to any and all former Smith Barney customers previously serviced by Alan Stoner or Joseph DiVito that have transferred to PaineWebber, including the gross commissions generated by such customers;
 - b) money damages in an amount to compensate for the loss of those customers;
 - c) such other relief as this Panel deems just and equitable; and
 - d) Smith Barney's attorneys' fees and costs incurred with respect to this Counterclaim.

In its Answer to Amended Statement of Claim and Restatement of Counterclaim, Respondent requested that the Arbitration Panel enter an Award in its favor and against Claimant:

1. Dismissing the Statement of Claim in its entirety, awarding Salomon Smith Barney its costs incurred in defending this action, including reasonable attorneys' fees and costs, and such other relief as the Arbitration Panel deems just and equitable; and
2. Finding Claimant liable on it's Counterclaim and ordering:
 - a. an accounting with respect to any and all former Smith Barney customers previously serviced by Alan Stoner or Joseph DiVito that have transferred to PaineWebber, including the gross commissions generated by such customers;
 - b. money damages in an amount to compensate for he loss of those customers;
 - c. disgorgement of Claimant's unjust enrichment;
 - d. such other relief as this Panel deems just and equitable; and
 - e. Smith Barney's attorneys' fees and costs incurred with respect to this Counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated February 6, 2002, the parties were advised of the Arbitration Panel's decision to conduct a hearing on the Motion for Rule to Show cause at the commencement of the hearing on February 19, 2002.

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 original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

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. The claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. The Counterclaim asserted in this matter shall be and hereby is dismissed in their entirety.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. 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, Inc. will retain or collect the non-refundable filing fees for each claim:

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$300.00 |
| Counter claim filing fee | = \$500.00 |

Member Fees

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. 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 |

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|---------------|
| One (1) Pre-hearing session(s) with Panel x \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference(s): August 24, 2001 1 session | |
| Eight (8) Hearing sessions x \$1,125.00 | = \$9,000.00 |
| Hearing Date(s): February 19, 2002 2 sessions | |
| February 20, 2002 2 sessions | |
| February 21, 2002 4 sessions | |
| Total Forum Fees | = \$10,125.00 |

The Arbitration Panel has assessed \$10,125.00 of the forum fees to Joseph A. DiVito, Jr.

Fee Summary

Claimant, Joseph A. DiVito, Jr., shall be and hereby is liable for:

| | |
|---|----------------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = <u>\$10,125.00</u> |
| Total Fees | = \$10,425.00 |
| <u>Less payments</u> | = <u>\$ 1,425.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 9,000.00 |

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

| | |
|---|---------------------|
| Type Filing Fee | = \$ 500.00 |
| Member Fees | = \$4,600.00 |
| <u>Forum Fees</u> | = <u>\$ 0.00</u> |
| Total Fees | = \$5,100.00 |
| <u>Less payments</u> | = <u>\$6,100.00</u> |
| Balance to be refunded by NASD Dispute Resolution, Inc. | = \$1,000.00 |

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Quinton F. Seamons, Esq. - Public Arbitrator, Presiding Chair
Howard W. Shannon - Public Arbitrator
Joseph Stallone - Non-Public Arbitrator

Concurring Arbitrators:

QUINTON F. SEAMONS
Quinton F. Seamons, Esq.
Public Arbitrator, Presiding Chair

February 28, 2002
Signature Date

Howard W. Shannon
Public Arbitrator

Signature Date

Joseph Stallone
Non-Public Arbitrator

Signature Date

| | |
|---|---------------|
| Initial Filing Fee | = \$ 300.00 |
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| Total Fees | = \$10,425.00 |
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| Balance Due NASD Dispute Resolution, Inc. | = \$ 9,000.00 |

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

| | |
|---|--------------|
| Type Filing Fee | = \$ 500.00 |
| Member Fees | = \$4,600.00 |
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Howard W. Shannon - Public Arbitrator
Joseph Stallone - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

Howard W. Shannon
Public Arbitrator

Joseph Stallone
Non-Public Arbitrator

Signature Date

Signature Date

Signature Date

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Howard W. Shannon - Public Arbitrator
Joseph Stallone - Non-Public Arbitrator

Concurring Arbitrators:

Quinton F. Seamons, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Howard W. Shannon
Public Arbitrator

Signature Date



Joseph Stallone
Non-Public Arbitrator

2/22/02

Signature Date