

10/18
G...

AWARD 11/11/05

NASD Dispute Resolution, Inc. CASE No. 03-05278

In the Matter Of:

Claimant:

Audrea Weitzman

Respondents:

Citigroup Global Markets, Inc

Salomon Smith Barney Inc

Jack B. Grubman

Hearing Site: One Liberty Plaza, 165 Broadway, 27th Fl; Mediation Room B [11/9/05 and 11/10/05] NYC.

Dates of Final Hearing: October 27, 2005; Nov 9, 2005; Nov 10, 2005; Nov 11, 2005

Nature of Dispute: Customer vs. Member and Associated Person

Representation of Parties:

For Claimant Audrea Weitzman:

Michael B. Lynch, Esq; and William B. Young, Esq; Hooper and Weiss, LLC, 815 North Garland Avenue, Orlando, Florida 32801

For Respondents Citigroup Global Markets, Inc; Salomon Smith Barney Inc; and Jack B. Grubman:

Mark L. Parmelee, Esq; Greenberg Traurig LLP, 200 Park Ave, 15th Fl; New York, NY 10166.

Case Information Available to Arbitrator Reese on November 9-11, 2005:

[1] Statement of Claim, filed on or about: July 18, 2003

[2] Uniform Submission Agreements: Audrea Weitzman [3/24/03]; Citigroup Global Markets, Inc [9/23/03]; Jack B. Grubman [9/24/03]. No submission agreement from Salomon Smith Barney appears in the file.

[3] Claimant's Exhibit A [7/18/03]; Claimant's Exhibits B-F; Claimants Exhibits G-J.

[4] Respondents' Answer to Statement of Claim, filed on or about Sept 12, 2003

[5] Respondents' Exhibits 1-30 [not previously sent to Arbitrator Reese].

1 Reese
11/11/05

2
9/8
[Signature]

[6] Claimant's Amended Statement of Claim, filed on or about July 20, 2004

[7] Respondents' Answer to Amended Statement of Claim, filed on or about Sept 21, 2004

[8] Respondent's Exhibit A to Answer to Amended Statement of Claim [9/21/04]

[9] Appointment of Reese Sole Arbitrator: Oct 5, 2004

[10] Initial Pre-Hearing Conference Scheduling Order, dated October 18, 2004. [Case set for final hearing in NYC 10AM, Sept 27, 2005, and 10 AM, Sept 28, 2005.]

[11] [From Arbitrator Reese's file] Copy of letter 7/13/05 from Michael B. Lynch, Esq, to Nadja P. Searchwell [NASD Dispute Resolution staff] requesting that this case "proceed solely on the pleadings."

[12] [From Arbitrator Reese's file] Copy of letter 7/25/05 from Vanier Martin [NASD Dispute Resolution staff] to Arbitrator Reese requesting a decision on Mr. Lynch's request 7/13/05 above.

[13] [From Arbitrator Reese's file] Copy of Email [9/15/05] from Arbitrator Reese to Vanier Martin [NASD Dispute Resolution staff]: no decision made on Mr. Lynch's request.

[14] [From Arbitrator Reese's file] Copy of Joint Motion to Recuse and Motion to Adjourn filed by FAX 4:15PM, Sept 26, 2005.

[15] [From Arbitrator Reese's file] Copy of Order [dated 9/27/05; issued at the conclusion of the initially scheduled Final Hearing NYC Sept 27, 2005]:

At this recorded proceeding, Mr. William Young, Esq, of Hooper and Weiss, Claimant's attorneys, participated by telephone. Mr. Mark L. Parmelee, Esq, Respondents' attorney, participated by telephone. [Staff assistance provided by Ms. Vanier Martin and Ms. Katherine Bayer, Esq].

The Joint Motion to Recuse [filed by FAX 9/26/05] was withdrawn. At the joint request of the attorneys, Arbitrator Reese agreed to decide this case "solely on the pleadings," as had been requested in Mr. Lynch's letter dated July 13, 2005.

The attorneys requested thirty days to file Final Briefs.

The Joint Motion to Adjourn [FAX 9/26/05] was granted.

Final hearing was re-set for November 9, 2005, and November 10, 2005, in NYC. [Attorneys not required to attend].

[16] Claimant's Final Brief, filed on or about October 25, 2005, with additional exhibits attached.

[17] Respondent's Final Brief filed on or about October 25, 2005, with additional Exhibit One attached [Exhibit One is the dismissal order in David Weitzman vs. Citigroup, et al, Case No 03-05298, by Arbitrator Levine 9/21/04].

2 [Signature]
9/11/05

3
18
Reese

Incomplete Case File:

The case files presented to Arbitrator Reese on November 9, 2005- November 11, 2005, were incomplete.

The sanitized files did not contain any information about what activity had occurred in this case from the date of filing, July 18, 2003, to the date of Arbitrator Reese's appointment on October 5, 2004, a period of fourteen months.

The Order dated Sept 27, 2005, requested that the full file be provided, so that this Arbitrator could understand this unusual delay, a delay far in excess of the nine-month guideline for resolving NASD cases. [See Order dated Sept 27, 2005; page 2, paragraph nine].

Such information about delay would be material in deciding how to properly allocate costs and fees.

NASD staff declined to provide any information whatsoever about this period of time. Repeated requests for the full files were made, and rejected.

Ms. Coleman, NASD staff, indicated on the record that there were indeed other documents and communications contained in separate "Communications Folders." She refused to provide them, on instructions to her from other, hidden personnel.

Apparently, NASD staff maintains separate folders for letters, case processing orders, motions, emails and other communications. Ms. Coleman stated that she had been instructed not to provide these folders.

It is unclear to this Arbitrator why such a policy of secrecy exists, what basis exists for it in the rules or regulations, or why any aspect of a case should be hidden from a panel.

It is also unclear who decides, and for what reasons, which portions of the files to sanitize.

The withheld information made it difficult, in this case, to understand the reasons for the unusual delay, and what impact that delay should have, if any, on the proper allocation of costs and fees.

The sanitized files provided on November 9-11, 2005, did not contain of any of the following [neither copies nor originals]:

[1] Letters, communications, pleadings or other documents related to the fourteen-month period from the date of original filing [on or about 7/18/03] to the date of Arbitrator Reese's appointment [10/5/04].

3
Reese
11/10/05

4
28
[2] Letter 7/13/05 from Michael B. Lynch, Esq, to Nadja P. Searchwell [NASD Dispute Resolution staff] requesting that case "proceed solely on the pleadings."

[3] Letter 7/25/05 from Vanier Martin [NASD Dispute Resolution staff] to Arbitrator Reese requesting a decision on Mr. Lynch's request [7/13/05] above.

[4] Email [9/15/05] from Arbitrator Reese to Vanier Martin [NASD Dispute Resolution staff]: "no decision made on Mr. Lynch's request".

[5] Joint Motion to Recuse and Motion to Adjourn, filed by FAX 4:15PM, Sept 26, 2005.

[6] Order [dated 9/27/05] issued at the conclusion of the initially scheduled Final Hearing [NYC, Sept 27, 2005] re-setting the case for final hearing on Nov 9 and Nov 10, 2005.

That order contained instructions to NASD staff to make available complete files on November 9 and November 10, 2005, at One Liberty Plaza, NYC.

Hearing in NYC Nov 9-10, 2005:

Upon review of the original file documents in NYC, it became clear that one or more of the voluminous Exhibits had not previously been forwarded. They were reviewed and considered for the first time on Nov 9-10, 2005.

Additional Hearing Telephone Conf November 11, 2005:

The attorneys could not be reached by telephone on November 10, 2005. Accordingly, an additional telephone conference call was scheduled for 3:00PM on Friday, November 11, 2005.

Participating in that call where Claimants Attorneys Mr. Michael B. Lynch, Esq, and Mr. William B. Young, Esq.; and Respondents' Attorney Mr. Mark L. Parmalee, Esq.

The attorneys explained that the delay between July 18, 2003, and October 5, 2004, had been by mutual consent, to allow other similar cases to proceed to arbitration, as some indication [but not decisive] of how this and other cases might be decided. Apparently, NASD Dispute Resolution staff was complicit in the attorneys' mutual decision to freeze this case.

The attorneys further explained that the potential to consolidate these cases, to avoid conflicting decisions, had been considered, but rejected, partially because there exists no specific Dispute Resolution rule allowing such consolidation [nor any rule preventing it], and because one or more of the parties would have resisted such consolidation. Such resistance is all the more reason that this matter should have been immediately brought before a Panel.

No motion, letters or agreements of any kind about any of this process were part of the files presented to this Arbitrator on November 9 and November 10, 2005, in NYC. The files are totally devoid of any mention of this long period of delay.

4
Reese
5/11/05

5
98
[signature]

Delay, Consolidation, and Case Processing Issues:

No panel has been allowed to consider the issue of delay or consolidation in this case. Perhaps the same is true of the dozens of similar cases, the Awards in which were submitted as Exhibits in this case.

Whether the process followed here [involving a fourteen month delay] was correct, rational, efficient or just has not been considered by any Arbitrator or Panel.

Apparently, NASD staff decided these matters on their own, simply by not paneling this case until October 5, 2004.

Information about the paneling process is considered confidential.

This procedure might be analogous, in the civil courts, to a court clerk agreeing with the attorneys, for reasons of convenience, simply not to place a docketed case before a judge, for fourteen months, and then keeping that process secret. That could never be tolerated.

The close involvement of staff in the timing of "paneling" cases is not healthy. Frequently, it seems, cases are simply held, "not paneled"[as occurred here], which creates an inappropriate opportunity to manipulate the selection process, and to manipulate the case processing process itself, injecting delay.

Any justice system needs to be process oriented. That is: how things are done, and how they appear, is as important, or more important, than what is done. The system itself has an interest in speedy adjudication and appropriate case processing. That interest is separate from, and different from, the interests of the parties, the attorneys or the administrative staff. It really is an overall "public" interest: in the adjudicatory process itself. That overall interest is closely tied to speed, and to proper case processing.

Case processing is substantive, not just procedural. That is precisely why the current Dispute Resolution policy of underpaying arbitrators for case processing is damaging, and ultimately counterproductive.

Any justice system needs plenty of fresh air. The process needs to be totally open to scrutiny. That does not mean that files need to be open, but rather that the process itself is open.

It has been this Arbitrator's observations that NASD Dispute Resolution in NYC functions in the opposite fashion, with a fortress mentality of secrecy. It is far from open. In fact, it operates with an intentional secrecy, which serves no one except those controlling the case administrative process, since secrecy gives them tremendous and arbitrary power.

5 [signature]
11/11/05

6
18
G...

If this case had been immediately paneled, as it should have been [and as the current nine-month guidelines direct], and if the process were open enough to allow easy communication between arbitrators [for which no forum is offered], it seems likely that some process of consolidation of all these cases could have been agreed upon, which would have allowed for efficient and speedy adjudication, to the benefit of all.

The Exhibits in this case contain the Awards in dozens of similar cases. In not a single decision or award, were any of these issues presented, addressed or decided.

Unfortunately, these issues are not presented for decision as part of this case. In fact, they have been intentionally left out. Therefore, these issues must be left aside. This Arbitrator is faced with the dismal task of deciding a case which is similar to dozens that have already been decided, on essentially the same facts. Absurdly, those cases are presented as Exhibits here, to reinforce the futility of this task.

The fact that Arbitrator time comes at such a low cost encourages miss-use of the that time, as is so spectacularly evidenced in the dozens of these cases offered here as Exhibits.

The personal calendar disruption resulting from the inability to decide this case in NYC as originally scheduled on October 27 and 28, 2005, and the disruption from not being able to conclude this case in NYC on November 10, 2005, is of little or no consequence.

Last minute settlements, schedule changes, and calendar disruption are a routine part of the Dispute Resolution process, of little monetary consequence to the parties or staff.

Dispute Resolution staff has told me on several occasions that they frequently hear complaints about these things from arbitrators, yet no changes are made to address them, to the detriment of the process.

Case Summary:

This case is approximately 2 ½ yrs old. This arbitrator was appointed after the case had been pending for 14 months.

Claimant asserts the following causes of action: [1] violation of Section 17[a] of the Securities Act of 1933; [2] violation of Section 15[d] of the Securities Exchange Act of 1934; [3] violation of Section 49:3-52 and Section 49:3-71 of the New Jersey Uniform Securities Law; [4] violation of NASD Rule 2210[d][1] ["Communications with the Public"]; [5] breach of fiduciary duty and respondeat superior; [6] concealment of material facts and conflicts of interest.

The Claimant's causes of action relate to losses incurred in the purchase and sale of shares of WorldCom stock in Claimant's account.

6
B...
5/11/10/5

7
98
Claimant purchased WorldCom stock on July 11, 1997, and on November 11, 1997, with a total value of \$19,763.30. Claimant sold her World Com stock on July 15, 2002, approximately five years later, at a loss totaling \$19,588.32.

Unless specifically admitted in their Answers, Respondents deny the allegations made in the Statement of Claim and Amended Statement of Claim, and Respondents assert various defenses.

Relief Requested:

Claimant requests rescissory damages in the amount of \$19,588.32. Claimant further requests punitive damages, interest, costs, attorneys' fees and any other relief deemed just and proper.

Respondents request that the claims be denied in entirety. Respondents also request that attorneys' fees and costs be assessed against Claimant.

Other Issues Considered and Decided:

Respondent Salomon Smith Barney, Inc, did not file with NASD Dispute Resolution a properly executed submission to arbitration. However, that entity is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure. Having answered the claim, it is bound by the determination of the Arbitrator on all issues submitted.

Award:

Having considered all of the pleadings exhibits and documents in the record submitted by NASD staff on November 9, 2005. November 10, 2005, and November 11, 2005, this Arbitrator decides as follows:

[1] Claimant's claims are denied in entirety.

[2] Any claims for relief not specifically addressed here, including Claimant's request for punitive damages, attorneys' fees, costs, and for damages under Sections 49:3-52 and 49:3-71 of the New Jersey Uniform Securities Law, are denied.

Fees:

The following fees have been incurred:

[1] Filing Fees:

NASD Dispute Resolution shall collect or retain non-refundable filings fees for each claim.

In this case, the Claimant shall be solely liable for all filing fees

7
S. 11/11/05

8
98
Reese

[2] Member Fees:

Member fees are assessed to each member firm that is a party to these proceedings, or to the member firm that employed the associated person. In this matter, the member firms are parties. In this matter, Respondents shall be jointly and severally liable for Member Surcharge Fees.

[3] Forum Fees:

Forum fees are assessed for each session conducted. A session is any meeting between the parties and the arbitrator [including the pre-hearing conference with the arbitrator] that lasts four [4] hours or less.

Forum fees associated with this proceeding have been as follows: [1] Initial pre-hearing conference October 18, 2004; [2] Final hearing October 27, 2005; [3] Final hearing November 9, 2005, and November 10, 2005; [4] telephone conference hearing 3:00PM, Friday, Nov 11, 2005.

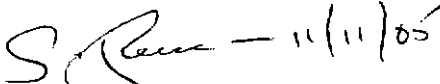
In this case, Claimant shall be solely liable for all forum fees.

[4] Arbitrator travel expenses and costs:

Travel expenses and costs were incurred by the arbitrator as follows: [1] for the initial final hearing scheduled for October 27 and October 28, 2005; and [2] for the final hearing on November 9 and November 10, 2005.

These expenses and costs shall be assessed in equal shares: 50% to Claimant, and 50% to all of the Respondents, jointly and severally.

SO ORDERED this 11th day of November 2005.



Algernon B. Reese, Sole Arb
NASD Dispute Resolution Arb #A32180
PO Box 227 [762 Co Rte 40]
Mt. Tremper, NY 12457
Tel: 845-6898-2338; cell: 347-451-5279
algernonreese@aol.com

XC , Michael B. Lynch, Esq; William Young, Esq; Hooper&Weiss LLC; Mark L. Parmelee, Esq; Greenberg & Traurig, LLP; Vanier Martin, staff NASD; Neva Coleman, staff NASD, Louise Hannafin, staff NASD; Katherine Bayer Esq, NASD; Elizabeth Clancy, Esq NASD, Linda Fienberg Esq NASD Wash, DC, George Friedman, Esq, NASD, Richard Berry NASD Case Admin; Todd Saltzman NASD staff.

8
Reese
11/11/05
(Page 8 of 8)