

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
Christopher Bailey,)
Claimant,) Case #88-00143
vs.) Award
Smith Barney Harris Upham Co., Inc. and)
John T. Trafford,)
Respondent.)

Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.
Mr. Norris L. Friedlander
Mr. Terrence W. Grant

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 15, 1988. The hearing was conducted in Fort Lauderdale, Florida, on June 7 and July 6, 1989 with a total of four (4) sessions.

Claimant, Christopher Bailey ("Bailey") alleged that Respondents' Smith Barney Harris Upham Co., Inc. ("SB") and John T. Trafford ("Trafford") fraudulently misrepresented to him the risk involved in purchasing index options in light of Bailey's expressed investment objectives, financial ability, and lack of investment sophistication. Additionally, Bailey claimed the alleged misrepresentations and omissions constituted violations of Section 10(b) and Rule 10(b)-5 of the Securities and Exchange Act of 1934; the Racketeer Influenced and Corrupt Organizations Act; and Breach of Fiduciary Duty.

Respondents' alleged that Bailey, with full knowledge of the risks involved, including research reports and statements, ratified those investments after losing money in the account; assumed the risk of further losses; and that any losses were due to his own negligence, recklessness, and failure to exercise due diligence over his account.

RELIEF REQUESTED

Claimant, Bailey, requested damages of Forty One Thousand and 00/100 (\$41,000.00 Dollars plus interest; punitive damages, attorney's fees and other costs. Respondents' requested dismissal of claim and costs.

AWARD

On June 7, 1989 and July 6, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on January 5, 1988, and by Respondents' on April 21, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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 the NASD, Inc.
2. Respondents' SB and Trafford shall be and hereby are liable, jointly and severally and shall pay to the Claimant the amount of Twenty Two Thousand and 00/100 (\$22,000.00) Dollars inclusive of interest.
3. Respondents' SB and Trafford shall be and hereby are liable, jointly and severally, and shall pay to the Claimant the further amount of Five Thousand and 00/100 (\$5,000) Dollars for attorneys' fees pursuant to Section 517.211, Florida Statutes.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars (4 sessions x \$750.00). Claimant shall be and hereby is assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars and the Respondents' shall be and hereby are assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars for which the Respondents shall be jointly and severally liable. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of his forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

NONE

ARBITRATORS CONCURRING

Myron Dunay
Norris L. Friedlander
Terrence W. Grant

Dated: July 17, 1989