

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
ROBERT J. WIDER,)
) Claimant,)
) Case #88-03667
vs.) Award
)
SMITH BARNEY, HARRIS UPHAM & CO., INC. and)
DANIEL C. STEWART,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Joseph L. Caruncho, Esq.
Eduardo J. Palacio, Esq.
Mr. Robert Gelfand

CASE SUMMARY

This claim was filed with the NASD, Inc. on November 25, 1988. The hearing was conducted in Fort Lauderdale, Florida on November 17, 1989 with a total of two (2) sessions.

Claimant Robert J. Wider ("Wider") alleged that Respondents Smith Barney, Harris Upham & Co., Inc. ("SBHU") and Daniel C. Stewart ("Stewart") made misrepresentations of material facts and omitted to state material facts; solicited the Claimant to make investments which were unsuitable in light of his stated investment objectives; and, that the wrongdoing of Respondents caused significant losses to the Claimant; that Respondents' conduct constituted negligence; churning of Claimant's account; a violation of Section 517.301 Florida Statutes; a violation of the 1933 Securities Act and the 1934 Securities Exchange Act; and, a violation of the Rules of the NYSE and NASD. Respondents denied all allegations of wrongdoing; alleged that Claimant was an experienced trader who wished to speculate in stocks and options; that the majority of trades were unsolicited and all were the decision of Claimant; and that the trades were suitable. Respondents asserted the affirmative defenses of failure to state a claim; waiver, estoppel and laches; authorization; approval and ratification of all trades; losses caused by Claimant's trading decisions; and, failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in the amount of Forty Five Thousand Thirty-Four and 82/100 (\$45,034.82) Dollars; interest; attorney's fees and costs; rescission for securities still owned; and damages pursuant to Chapter 517, Florida Statutes. Respondents requested dismissal, fees and costs.

AWARD

On November 17, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 22, 1988, and by Respondent SBHU on February 2, 1989 and Stewart on January 25, 1989. 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, SBHU and Stewart, shall be liable, jointly and severally, and shall pay to the Claimant the amount of Six Thousand Seven Hundred Fifty and 00/100 (\$6,750.00) Dollars including interest.
3. Claimant's request for attorney's fees is hereby denied.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400.00 x two sessions). Respondents are hereby assessed One Hundred Twenty and 00/100 (\$120.00) Dollars, jointly and severally, and Claimant is hereby assessed forum fees in the amount of Six Hundred Eighty and 00/100 (\$680.00) Dollars. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Joseph L. Caruncho Esq., Eduardo J. Palacio Esq. and Mr. Robert Gelfand.

Dated: December 6, 1989