

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
CURT DREW KOSOW,)
Claimant.)
vs.) Case #89-01551
Award
SMITH BARNEY, HARRIS UPHAM & CO. INC.)
and BENJAMIN BAUM,)
Respondents.)

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.
Harry Polansky
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on May 25, 1989. The hearing was conducted in Fort Lauderdale, Florida on November 29, 1989, with a total of three sessions.

Claimant Curt Drew Kosow ("Kosow") alleged that Respondents Smith Barney, Harris Upham & Co. Inc. ("SBHU") and Benjamin Baum ("Baum") breached their stock index options agreement with Claimant by failure to execute an option sell order based on the Dow average, and that such breach of contract caused Claimant a loss.

Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of: failure to state a claim; assumption of risk and losses caused by risk; losses caused by negligence or recklessness of Claimant; and, failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$19,000.00 to \$31,000.00. Respondents requested dismissal of the Claim.

AWARD

On November 29, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 22, 1989, and by Respondents SBHU on July 21, 1989 and by Baum on November 29, 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 Baum, are hereby liable, jointly and severally, and shall pay to the Claimant the amount of Eight Thousand One Hundred Twenty Five and 00/100 (\$8,125.00) Dollars.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondents, SBHU and Baum, are hereby assessed forum fees in the amount of Twelve Hundred and 00/100 (\$1,200.00) Dollars (\$400.00 x three sessions) of which they shall pay Four Hundred and 00/100 (\$400.00) Dollars directly to Claimant, and Eight Hundred and 00/100 (\$800.00) Dollars to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

William A. Fleck Esq., Harry Polansky and Anthony S. Paetro Esq.

—

Received this 12th day of December, 1989.