

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
<u>Name of Claimant(s)</u>)	
Frederick J. Keitel, III)	
Dorothy Keitel)	Case No. 89-02692
<u>Name of Respondent(s)</u>)	
Smith Barney Harris Upham & Co., Inc.)	
George B. Malin)	

REPRESENTATION

Claimants, Frederick J. Keitel and Dorothy Keitel ("the Keitel's"): were pro se.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney") and George Malin ("Malin"): David Friedman, Esq. of Smith Barney.

CASE INFORMATION

Statement of Claim filed: on September 27, 1989.

Claimants' Submission Agreement signed: on September 26, 1989 and May 22, 1991.

Respondents' Statement of Answer filed: on January 23, 1990.

Respondents' Submission Agreement signed: by Malin on January 19, 1990, and by David S. Friedman on behalf of Smith Barney on January 22, 1990.

HEARING INFORMATION

On February 26 and March 6, 1991, in Fort Lauderdale, Florida, pre-hearing conferences lasting two (2) sessions were conducted via telephone conference call with an arbitrator.

On April 17, November 7, and 8, 1991, in Fort Lauderdale, Florida, hearings lasting five (5) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for: violation of Section 517.301 Florida Statutes; fraud; misrepresentation; violation of 18 U.S.C Sections 1961-1968 (RICO); and, violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934. Claimants alleged that Respondent, Malin, was liable for misrepresenting, among other things, that a certain stock would increase in value.

Respondents denied all allegations of wrongdoing and alleged that: the recommendations were not based on inside information; the transactions did not occur at Smith Barney; and Claimant, Frederick Keitel, was a sophisticated investor and a broker with access to the same information as Malin.

Respondents alleged the affirmative defenses of: failure to state a claim; Claimant, Keitel's trades were a result of his own investment decision; failure to mitigate damages; and, Claimants cannot establish that respondent superior applies.

RELIEF REQUESTED

Claimants requested damages in the amount of \$96,000.00, plus punitive damages of not less than \$200,000.00, attorney's fees, costs, interest and such other relief as the Panel deems appropriate.

Respondents requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

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.

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. Respondents, Smith Barney and Malin, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorney's fees, costs, punitive damages and RICO damages is denied.
3. Respondents' request for attorney's fees and costs is denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,350.00 (two pre-hearing conferences x \$300.00 per conference plus five sessions x \$750.00 per session). Claimants are hereby assessed \$4,350.00 for which the NASD shall retain the \$550.00 previously deposited in partial satisfaction thereof. Please note that \$200.00 of the \$750.00 previously deposited has been applied towards the non-refundable filing fee which should have been paid at the time the claim was filed.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/
Myron Dunay, Esq.

Public

/S/
Douglas Delaney, Jr.

Industry

/S/
Harry Polansky

Public

Date of Decision: December 5, 1991