

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Eric L. Adams, Mary L. Adams
and Maria L. De Angulo.)

Case No. 89-02912

Name of Respondent(s))

Dean Witter Reynolds, Inc.)
Smith Barney Harris Upham & Co., Inc.)
Philip R. Anderson.)

Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.
Judy Avey
Douglas Delaney, Jr.

Public
Public
Industry

REPRESENTATION

Claimants were represented by Leonor M. Logomasino, Esq. of Stinson, Lyons, Gerlin & Bustamante, P.A. Respondents, Dean Witter and Anderson, were represented by Sara Soto, Esq. of Bailey and Hunt. Respondent, Smith Barney, was represented by Keith Olin, Esq. of Ruden, Barnett, McClosky, Smith, et al.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 18, 1988. Claimants, Eric L. Adams, Mary L. Adams ("Adams"), and Maria L. De Angulo, ("De Angulo"), alleged that Respondents, Philip R. Anderson ("Anderson"), Smith Barney, Harris Upham and Co. ("SEHU"), through Anderson until September 1987, and Dean Witter Reynolds, Inc. ("DWR"), through Anderson after September 1987, made misrepresentations of and omitted to state material facts regarding trading in naked options; churned the Claimants' accounts; wrongfully utilized margin; recommended and effected trades in options that were unsuitable in light of Claimants' expressed investment objectives; that Claimants were inexperienced unsophisticated investors who sought safe and conservative investments; that Respondents' actions constituted fraud, breach of contract, gross negligence, negligence, breach of fiduciary duty, unjust enrichment, negligent supervision, conversion and, violation of Section 10(b) of the 1934 Exchange Act, Sections 517.301, 772.11 and 812.014, Florida Statutes.

In a Statement of Answer filed with the NASD on April 4, 1990, Respondents, DWR and Anderson, denied all allegations of wrongdoing and alleged that Claimants knowingly pursued an option trading strategy; that all but one trade which had to be liquidated had been put on at SEHU; that nineteen days after the accounts were transferred to DWR the stock market crashed; that Claimants represented to DWR that they were suitable to trade options; and, that Claimants were fully advised of the risks.

Respondents, DWR and Anderson, alleged the affirmative defenses of estoppel; laches; bar by waiver; ratification; failure to specify unsuitable trades; set off; losses attributable to SEHU; and, reduction by profits taken.

Respondent, DWR, filed a counterclaim and alleged that Claimants maintained a non-discretionary account; the market crash destroyed the equity in Claimants' accounts; and, the liquidation created unsecured debit balances in the accounts which are due and owing to DWR.

Claimants/Counter Respondents denied all allegations of wrongdoing and alleged the affirmative defense of bar.

Respondent, DWR, filed a Crossclaim against SEHU and alleged that SEHU and not DWR is liable for any losses incurred by Claimants.

In a Statement of Answer filed with the NASD on May 20, 1990, Respondent, SEHU, denied all allegations of wrongdoing and alleged that the Claimants represented they were suitable for the options strategy; were experienced investors with 5 to 10 years of options experience; that their investment objective was speculations; that all risks were fully disclosed; and, when the Claimants transferred the accounts to DWR, they were profitable.

SEHU alleged the affirmative defenses of estoppel; assumption of risk; ratification; no losses at SEHU; losses not result of any wrongdoing by SEHU; statute of limitations and laches; and, failure to state a claim.

RELIEF REQUESTED

Claimants requested damages in excess of \$500,000.00, punitive damages, treble damages, an accounting, a constructive trust, costs and attorney's fees.

Respondents, DWR and Anderson, requested dismissal of Claimants' claims, attorney's fees and costs; compensatory damages for the Adams' account in excess of \$50,000.00, and from the Adams-De Angulo account in excess of \$66,000.00; and, indemnification, contribution, compensatory damages, interest, attorney's fees and costs from SEHU.

Respondent, SEHU, requested dismissal and costs.

Claimants/Counter Respondents requested damages, attorney's fees and costs.

AWARD

On January 22 and 23; March 18 and 19; April 1, 2, 29 and 30, 1991, in Fort Lauderdale, Florida, during a hearing lasting fifteen (15) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on October 12, 1989; by Timothy P. Maloney on behalf of Respondent, DWR, on April 3, 1990; by Respondent, Anderson, on April 3, 1990; and, by Hugh M. McGovern on behalf of Respondent, SEHU, on March 19, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 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.
2. Respondents, DWR, Anderson and SEHU, are found not liable, regarding the joint accounts of Eric L. Adams and Mary L. Adams and, therefore, all claims against them pertaining to those accounts are hereby dismissed.
3. Respondents, DWR, Anderson and SEHU, are found liable jointly and severally, regarding the joint accounts of Maria L. De Angulo and Eric L. Adams, and shall pay to the Claimant, De Angulo, the amount of \$92,556.00, plus interest at the legal rate of 12% per annum in the amount of \$39,776.00 for a total due to the Claimant, De Angulo, of \$132,332.00.
4. Claimants' requests for attorney's fees, costs, accounting, constructive trust, punitive damages, and treble damages are denied.
5. Claimants/Counter Respondents are found not liable and, therefore, all claims against them by Counter Claimant, DWR, are hereby dismissed.
6. Cross Respondent, SEHU, is found not liable and, therefore, all claims against it by Cross Claimant, DWR, are hereby dismissed.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$15,000.00 (fifteen sessions x \$1,000.00). Claimants are hereby assessed \$5,000.00 for which the NASD shall retain \$2,750.00 of the fees previously deposited in partial satisfaction thereof. The NASD shall also retain \$250.00 of the fees previously deposited for the non-refundable filing fee. Respondents, DWR and Anderson are hereby assessed \$5,000.00 jointly and severally, for which the NASD shall retain \$1,750.00 of the fees previously deposited in partial satisfaction thereof. The NASD shall also retain \$1,000.00 of the fees previously deposited for the non-refundable filing fees on the Counter Claim and Cross Claim. Respondent, SEHU, is hereby assessed \$5,000.00 payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
Myron Dunay, Esq.

/s/
Judy Avey

/s/
Douglas Delaney, Jr.

Date of Decision: May 20, 1991