

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))

Henry G. and Beverly B. Lyle)

Case No. 89-03018

Name of Respondent(s))

Dean Witter Reynolds, Inc.)

Smith Barney Harris Upham & Co., Inc.)

Philip Anderson)

REPRESENTATION

For Claimants, Henry and Beverly Lyle ("the Lyles"): Joseph Matthews, Esq. of Colson, Hicks Eidson Colson & Matthews.

For Respondent, Smith Barney Harris Upham & Co., Inc. (Smith Barney): Bennett Falk, Esq. of Morgan, Lewis, Bockius.

For Respondent, Dean Witter Reynolds, Inc. ("Dean Witter") and Philip Anderson ("Anderson"): Guy Bailey, Jr., Esq. of Bailey and Hunt.

CASE INFORMATION

Statement of Claim filed on: October 27, 1989 and amended on July 27, 1990.

Claimants' Submission Agreement signed on: October 19, 1989.

Respondents, Dean Witter and Anderson's, Statement of Answer including a cross-claim filed on: February 5, 1990 and amended on July 25, 1990 and Respondent, Smith Barney's Statement of Answer including a cross-claim filed on February 2, 1990 and amended on July 3, 1990.

Respondents Submission Agreement signed by Anderson on February 1, 1990, and by Timothy Maloney on behalf of Dean Witter on February 1, 1990 and by Joan Guggenheimer, Esq. on behalf of Smith Barney on October 23, 1990.

HEARING INFORMATION

On October 4, 1990, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On October 23 and 24, 1990 and January 28, 29; February 7, 8; May 6, 7; July 8, 9; August 26; and, October 4, 1991, in Fort Lauderdale, Florida, hearings lasting 23 sessions were conducted.

CASE SUMMARY

Claimants, Henry and Beverly Lyle alleged that Respondents, Dean Witter Reynolds, Inc., Smith Barney Harris Upham and Co., Inc. and Philip Anderson, were liable for: misrepresentation; breach of fiduciary duty; negligence; and, violations of the Florida RICO Act for recommending that Claimants engage in unsuitable options trading.

Respondents, Dean Witter and Anderson alleged that: Claimants were sophisticated investors who were suitable for the investments; Claimants were informed of the risks involved; no misrepresentations were made; and, the account was not churned. Dean Witter and Anderson asserted affirmative defenses including: estoppel; acquiescence; laches; waiver; ratification; failure to indicate which transactions were unsuitable; and loss was caused by Claimants' own investment decisions; market conditions cannot be attributed to Respondents; any recovery must be reduced by the profits Claimants made; and, failure to properly allege the elements of a RICO claim. Dean Witter asserted a cross-claim against Smith Barney for indemnification or contribution.

Respondent, Smith Barney, alleged that: Claimants were sophisticated investors; ratified every trade; assumed the risks of options trading; are estopped from asserting their claims; Smith Barney provided adequate supervision; any losses occurred after Claimants transferred their account to Dean Witter; any losses can be attributed to the 1987 market crash; and, Claimants failed to state a claim under Florida RICO Statutes. Smith Barney asserted a cross-claim against Dean Witter and Anderson for indemnification or contribution.

Dean Witter answered the cross-claim and alleged that if Claimants are entitled to any recovery, Smith Barney should be held responsible.

RELIEF REQUESTED

Claimants requested damages in the approximate amount of \$1,000,000.00, plus treble damages, interest, costs, attorney's fees and other punitive damages.

Respondents, Dean Witter and Anderson, requested dismissal of the claim plus costs and attorney's fees and cross claimed against Smith Barney for contribution or indemnification, plus attorney's fees and costs. Dean Witter and Anderson requested dismissal of Smith Barney's cross-claim. Respondent, Smith Barney, requested dismissal of the claim plus costs and cross-claimed against Dean Witter and Anderson for contribution or indemnification plus interest, costs and attorney's fees. Smith Barney requested dismissal of Dean Witter's cross-claim.

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. Respondent, Dean Witter, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Respondents, Smith Barney and Anderson, are found liable under Count III of the Amended Statement of Claim, jointly and severally, and shall pay to Claimants the amount of \$81,529.00
3. Respondents, Smith Barney and Anderson, are found not liable under all remaining counts and, therefore, those counts are hereby dismissed.
4. Claimants' request for interest, costs, treble damages and punitive damages is denied.
5. Cross Respondent, Dean Witter and Anderson, are found not liable to Cross Claimant, Smith Barney, and therefore, all cross claims against them are hereby dismissed.
6. Cross Respondents, Smith Barney, is found not liable to Cross Claimants, Dean Witter and Anderson, and therefore, all cross claims against it are hereby dismissed.
7. Pursuant to the joint request of the parties, this Panel leaves the determination of the parties entitlement to attorney's fees to the appropriate court of competent jurisdiction.

OTHER COSTS

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 \$23,300.00 (one pre-hearing conference x \$300.00 plus 23 sessions x \$1,000.00 per session). Claimants are hereby assessed \$5,825.00 for which the NASD shall retain the \$750.00, previously deposited in partial satisfaction thereof; \$250.00 of the \$1,000.00 previously deposited by Claimants has been applied towards the non-refundable filing fee. Respondent, Dean Witter, is hereby assessed \$5,825.00 payable to the National Association of Securities Dealers, Inc. The NASD shall retain the \$500.00 previously deposited by Dean Witter in partial satisfaction

thereof. \$500.00 of the \$1,000.00 previously deposited by Dean Witter has been applied towards the non-refundable filing fee. Respondent, Smith Barney, is hereby assessed \$5,825.00 payable to the NASD, Inc. The NASD shall retain the \$500.00 previously deposited by Smith Barney in partial satisfaction thereof. \$500.00 of the \$1,000.00 previously deposited by Smith Barney has been applied towards the non-refundable filing fee. Respondent, Anderson, is hereby assessed \$5,825.00 payable to the NASD, Inc.

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

Concurring Arbitrators' Signatures

Name

/S/
Casey W. Mills, Esq.

Public

/S/
Robert Herschmann, Esq.

Public

/S/
Leslie Bishop

Industry

Date of Decision: December 26, 1991