



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS-

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant

Donald A. Danielson

90-03592

Name of Respondent

Smith Barney Harris Upham & Co., Inc.

REPRESENTATION

For Claimant, Donald A. Danielson ("Claimant"): Daniel J. Brooks, a sole practitioner.

For Respondent, Smith Barney Harris Upham & Co., Inc. ("Smith Barney"): Paul K. Barenholtz, of Smith Barney.

CASE INFORMATION

Statement of Claim filed: December 19, 1990.

Claimant's Submission Agreement signed on: May 21, 1991.

Statement of Answer filed by Respondent on: March 28, 1991.

Respondent's Submission Agreement signed on: July 30, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: July 30, 1991/2 sessions
September 6, 1991/2 sessions

Hearing Location: NASD, Inc./New York City, NY

CASE SUMMARY

Claimant alleged he instructed his Smith Barney account executive, Robert J. Hiel ("Hiel"), to invest his money conservatively without risking any principal. Claimant further stated Hiel was his son-in-law.

AWARD
#90-03592

-2-

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Claimant alleged Hiel purchased government and municipal bonds and opened a money market account for him. Claimant stated that in or about February 1990, Hiel advised Claimant he could earn extra income through options trading. Claimant approved this idea on the condition that none of his principal be placed at risk. Claimant asserted Hiel did not disclose to him any of the risks associated with options trading and that if he had, Claimant would not have approved options trading. Claimant alleged Hiel misrepresented the nature of options trading because he had recently lost a major account and received pressure from his supervisors at Smith Barney to increase the commissions he generated for the firm.

Claimant stated he signed an options account agreement, but not a limited power of attorney authorizing Hiel to trade in his account.

Claimant alleged Hiel falsely represented to Claimant he had a contact who was a trader and who would see to it Claimant received favorable treatment. Claimant stated Hiel assured him that losing transactions were merely paper losses which would be compensated for by offsetting transactions Hiel had arranged through his contact. Claimant asserted he later discovered there was no contact and that Hiel was attempting to recoup the losses by engaging in numerous risky options transactions in Claimant's account.

Claimant asserted Hiel advised him he would be receiving correspondence from Smith Barney due to the fact that his account had losses of approximately \$48,000.00 by May 1990; however, Hiel stated this was a mere formality and did not reflect the compensating trades which Hiel had arranged through his contact. Claimant stated Hiel told him to sign and return the letter and that the apparent losses would balance themselves out. Claimant stated he signed and returned the letter to Smith Barney on or about May 8, 1990.

Claimant asserted the losses were not balanced out, but continued to mount. Claimant stated he questioned Hiel about the soundness of his portfolio, but Hiel assured him it was in no danger.

Claimant alleged Hiel continued to engage in heavy options trading between February and July 16, 1990, during which period he earned commissions ranging from approximately \$2,000.00 to \$8,000.00 per month. Claimant stated Hiel left Smith Barney on July 16, 1990 and pursuant to Claimant's inquiry, admitted he had defrauded Claimant of approximately \$106,000.00.

Claimant alleged Hiel violated Sect. 10(b) of the Exchange Act and Rule 10b-5. Claimant alleged Smith Barney was liable for: Hiel's securities fraud under the doctrine of respondeat superior; as a "controlling person," pursuant to Section 20(a) of the Exchange Act; and for Hiel's common law fraud. Claimant further asserted Respondent breached the fiduciary duty it owed Claimant; was negligent; and breached its implied covenant of good

AWARD
#90-03592

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faith and fair dealing as well as applicable New York Stock Exchange and NASD regulations.

Respondent alleged the Claimant was an experienced options investor who was given notice of the risks inherent in options trading and repeatedly assured Smith Barney of his authorization of the trading and his awareness of its risks.

Respondent asserted Claimants Option Account Form and Agreement indicated that "speculation" was his sole investment objective and that this form was approved by the Branch Office Manager Registered Options Principal and the Compliance Registered Options Principal.

Respondent stated that in the Spring of 1990, Claimant began to trade index options and on May 8, 1990 the Branch Office Manager, E. James Mulcahey, Jr., ("Mulcahey") wrote to Claimant noting there was potential for a significant loss in the account, that options trading could be viewed as speculative and that he should consider using stop orders to limit losses. Respondent asserted Claimant continued to trade options through the first half of July 1990; however, after Hiel left Smith Barney Claimant spoke with Mulcahey and admitted his losses were his own responsibility and that he could afford the financial loss. Respondent alleged Claimant never mentioned any impropriety on Hiel's part.

Finally, Respondent stated no special financial pressure was placed on Hiel by Smith Barney and that Claimant received a discount commission rate for the bulk of his trades.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$106,000.00, with pre-award interest, as compensatory damages; punitive damages in the amount of \$150,000.00; costs; disbursements; attorney's fees; and reimbursement of the filing fee.

Respondent requested: the claim be dismissed in its entirety.

AWARD

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.

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, Smith Barney, Harris Upham & Co., Inc., is liable to the Claimant, Donald A. Danielson, and shall pay to Claimant the sum of EIGHTEEN THOUSAND SEVEN HUNDRED EIGHTY NINE DOLLARS AND NO CENTS (\$18,789.00);
- 2- All other claims are dismissed;
- 3- The parties shall bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fees are assessed.

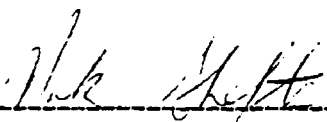
4 sessions X \$750 = \$3,000.

Forum fees Assessed Against:

- 1- Claimant, in the amount of \$2,250.00; however, Claimant may use its \$750.00 hearing session deposit to offset part of this fee, thereby the amount due and owing equals \$1,500.00;
- 2- Respondent, in the amount of \$750.00.

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

CONCURRING ARBITRATOR



Mark D. Shefts/Industry-Panelist

AWARD-#90-03592

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CONCURRING ARBITRATORS

/s/

Robert Seaman, Esq./Public-Chairman

/s/

Edward M. Sills, Esq./Public-Panelist

/s/

Mark D. Shefts/Industry-Panelist

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Robert Seaman/Public-Chairman