

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Charles W. Gordon

91-01427

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
John S. DeRosa

REPRESENTATION

Claimant Charles W. Gordon ("Claimant") was represented by David M. Black, Esq. of the law firm of Sommers, Schwartz, Silver & Schwartz, P.C.

Respondent Smith Barney Harris Upham & Co., Inc. ("Smith Barney") was represented by inhouse counsel Edward Turan, Esq.

Respondent John S. DeRosa ("DeRosa") was represented by Francis X. Stone, Esq.

CASE INFORMATION

Statement of Claim filed on: May 28, 1991.

Claimant's Submission Agreement signed on: May 20, 1991.

Statement of Answer filed by Respondent Smith Barney on: July 31, 1991.

Respondent Smith Barney's Submission Agreement signed on: July 31, 1991.

Statement of Answer and Counterclaim filed by Respondent DeRosa on: August 6, 1991.

Respondent DeRosa's Submission Agreement signed on: August 26, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: February 19, 1992, 2 sessions
February 20, 1992, 2 sessions
June 30, 1992, 2 sessions

Hearing Location: Embassy Suites, Southfield Michigan

CASE SUMMARY

Claimant alleged that Respondent DeRosa contacted Claimant via a cold call and Claimant opened an account with Respondent Smith Barney. Claimant further alleged that Respondents Smith Barney and DeRosa did not execute Claimant's trade orders relating to securities of Data Products and Maytag and that Respondent DeRosa recommended to Claimant to purchase Polaroid stocks "on margin" and DeRosa failed to tell Claimant that levels of risks involved in buying securities on margin were high and inconsistent with Claimant's investment objectives and Respondent DeRosa made material fraudulent statements/omissions and that he stated he had "insider information" relating to Polaroid stock.

Respondent Smith Barney maintained Claimant did not put in the orders as he specified and Claimant placed an order to sell Maytag stock at 25 3/8 and the market value of Maytag never increased to that point. Respondent Smith Barney further maintained that their research department issued a very favorable buy recommendation on Polaroid and based on DeRosa's recommendation Claimant purchased Polaroid and the assertion that Respondent DeRosa advised Claimant of inside information is frivolous. Respondent Smith Barney asserted the following affirmative defenses: statement or claim fails to state a claim, ratification, no damages to Claimant from action of Respondent Smith Barney or its employees and statute of limitations. Respondent DeRosa maintained he did not have any "insider information" on Polaroid or any other stock and never suggested to Claimant otherwise. Respondent DeRosa further maintained all recommendations made to Claimant by Respondents were adopted by Claimant. Respondent DeRosa asserted counterclaims in libel and slander.

RELIEF REQUESTED

Claimant requested the sum of \$400,000 in compensatory damages; interest plus attorneys' fees.

Respondent Smith Barney requested all claims by Claimant be dismissed and costs be awarded.

Respondent DeRosa requested: 1) all claims by Claimant be denied. 2) an award equal to Respondent DeRosa's out of pocket costs and expenses to defend against Claimant's claim. 3) an award of nominal actual damages 4) punitive damages 5) award of costs and attorneys' fees plus interest.

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.

NASD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant against Respondent DeRosa be and hereby are denied in their entirety.
2. Respondent Smith Barney be and hereby is liable and shall pay to the Claimant the sum of \$6,250.
3. All counterclaims by Respondent DeRosa be and hereby are denied in their entirety.
4. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

6 sessions x \$750 = \$4500 less hearing session deposit of \$1400 = \$3100 net due.

Claimant be and hereby is liable and shall pay to the NASD the sum of \$1500.

Respondents jointly and severally be and hereby are liable and shall pay to the NASD the sum of \$1600.

The NASD shall retain the \$200 filing fee previously deposited by Claimant and \$250 filing fee previously deposited by Respondent DeRosa.

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

Concurring Arbitrator's Signature:
Name

Public/Industry

Francis C. Flood, Esq.

Public Arbitrator

Date of Decision: August 26, 1992

AWARD

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Concurring Arbitrator's Signature:

Name

Public/Industry


Robert S. Bick, Esq.

Public Arbitrator

Date of Decision: August 26, 1992

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Concurring Arbitrator's Signature:

Name

Public/Industry



Joseph R. Papo

Industry Arbitrator

Date of Decision: August 26, 1992