

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Avner Ben Moshe

Case No. 91-01800

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.
Tevy Wellins
Henry Tramazzo

REPRESENTATION

For Claimant, Avner Ben Moshe, ("Ben Moshe"): William P. Doyle, Esq. of the law office of William P. Doyle.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney"), Tevy Wellins ("Wellins") and Henry Tramazzo ("Tramazzo"): Joan Guggenheimer, Esq. of Smith Barney.

CASE INFORMATION

Statement of Claim filed: June 11, 1991 and Amended August 16, 1991. Claimant's Submission Agreement signed: June 3, 1991.

Respondents' Statement of Answer filed: September 25, 1991. Respondents' Submission Agreements signed by Tramazzo and Wellins on September 9, 1991, and by Joan Guggenheimer on behalf of Smith Barney on September 3, 1991.

HEARING INFORMATION

On November 2, 1992, January 28 and 29, 1993, in Fort Lauderdale, Florida, hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: violations of Federal and Florida Securities law; breach of fiduciary duty; negligence and gross negligence; misrepresentation and, fraud.

Claimant alleged that Respondents failed to execute trades of index options and commodities in accordance with Claimant's instructions and closed out Claimant's account arbitrarily and without notice.

Respondents denied all allegations of wrongdoing and alleged that Claimant was repeatedly advised that he could not increase his positions beyond his credit limit; Claimant was requested to transfer his account out of Smith Barney due to his dissatisfaction; Respondent extended the deadline for transferring his account and the account was closed in accordance with the instructions from Claimant's wife who had trading authorization over the account.

Respondents alleged the affirmative defenses of: authorization; ratification; estoppel; failure to allege facts upon which a claim for relief may be granted; the failure to increase positions did not cause any loss to Claimant; Respondents had no duty to allow Claimant to increase his positions; and, failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in excess of \$125,000.00, plus punitive damages, attorney's fees, costs and interest.

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 and post-hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

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

OTHER COSTS

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