

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimant

Seymour Millstein

91-02394

Name of Respondents

Smith Barney, Harris & Upham & Co. Inc.
Gregg F. Gallagher

REPRESENTATION

For Claimant Seymour Millstein: John Rogers Carroll, Esq. of Carroll and Carroll.

For Respondents Smith Barney, Harris & Upham & Co., Inc. and Gregg F. Gallagher: Joan Guggenheimer, Esq. of Smith Barney, Harris & Upham & Co. Inc.

CASE INFORMATION

Statement of Claim filed on: August 2, 1991.

Claimant's Submission Agreement signed on: August 1, 1991.

Joint Statement of Answer filed by Respondents, Smith Barney, Harris & Upham & Co. Inc. and Gregg Gallagher on: October 17, 1991.

Respondent, Smith Barney, Harris & Upham & Co. Inc.'s Submission Agreement signed on: October 16, 1991.

Respondent, Gregg F. Gallagher's Submission Agreement filed on: October 21, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: March 11, 1992 / 2 sessions
August 12, 1992 / 2 sessions

Hearing Location: NASD, Philadelphia, PA.

CASE SUMMARY

Claimant, alleged that he received several unsolicited calls from Respondent Gallagher in late 1988 and Respondent Gallagher convinced Claimant to open an account for trading on the stock market and to use the services of Respondent Smith Barney, Harris & Upham & Co. Inc. for this purpose. Claimant alleged he purchased stock through Respondents and informed Respondent Gallagher that he wanted to invest conservatively and Respondent Gallagher did not tell Claimant the company he invested in, Pantera's Corp., was then in a desperate condition. Claimant further alleged Respondents failed to provide Claimant with any publications, reports, Red Herrings, prospectives, financial statements or other descriptive materials concerning Pantera's Corp. Claimant further alleged that the stock began to decline soon after Claimant bought it and he was urged to purchase more and Respondent Gallagher never told Claimant about "Stop-Loss Order" and because of Respondents' action Claimant had to sell other stock to maintain Respondent Smith Barney's minimum maintenance requirement. Claimant further alleged Respondents made misrepresentations and omissions and the securities were unsuitable.

Respondents maintained that Claimant was looking for aggressive investments that could yield quick profits and Respondent Gallagher's recommendations to Claimant were consistent with the customer's stated objectives and level of sophistication. Respondents further asserted the following defenses: Claimant failed to state a claim, statute of limitations, laches and other various defenses.

RELIEF REQUESTED

Claimant requested: \$279,214.50 in compensatory damages, and interest, punitive damages, all costs and expenses and attorneys' fees.

Respondents requested: that all claims be dismissed.

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. All Claimant's claims be and hereby are dismissed in their entirety.

Page three
Award 91-02394

2. Each party is to bear its own costs and attorneys' fees

FORUM FEES

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

4 sessions x \$750.00 = \$3,000.00 less \$750.00 hearing session deposit = \$2,250.00 net due.

Forum fees Assessed Against:

Claimant be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fee.

Respondent Smith Barney, Harris & Upham & Co. Inc. be and hereby is liable and shall pay to the NASD the sum of \$750.00 to represent forum fees.

Respondent Gallagher be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fees.

The NASD shall retain the \$750.00 hearing session deposit and \$200.00 filing fee previously deposited by Claimant.

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

ARBITRATION PANEL

Name

Public/Industry

Edward T Becker

Industry

Page three
Award 91-02394

2. Each party is to bear its own costs and attorneys' fees

FORUM FEES

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

4 sessions x \$750.00 = \$3,000.00 less \$750.00 hearing session deposit = \$2,250.00 net due.

Forum fees Assessed Against:

Claimant be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fee.

Respondent Smith Barney, Harris & Upham & Co. Inc. be and hereby is liable and shall pay to the NASD the sum of \$750.00 to represent forum fees.

Respondent Gallagher be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fees.

The NASD shall retain the \$750.00 hearing session deposit and \$200.00 filing fee previously deposited by Claimant.

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

ARBITRATION PANEL

Name

Public/Industry

JOHN W. LEAR

Page three
Award 91-02394

2. Each party is to bear its own costs and attorneys' fees

FORUM FEES

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

4 sessions x \$750.00 = \$3,000.00 less \$750.00 hearing session deposit = \$2,250.00 net due.

Forum fees Assessed Against:

Claimant be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fee.

Respondent Smith Barney, Harris & Upham & Co. Inc. be and hereby is liable and shall pay to the NASD the sum of \$750.00 to represent forum fees.

Respondent Gallagher be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fees.

The NASD shall retain the \$750.00 hearing session deposit and \$200.00 filing fee previously deposited by Claimant.

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

ARBITRATION PANEL

Name

Public/Industry

DONALD L. BRUTON, ESQ.

PUBLIC, CHAIRPERSON
