

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Johanna Campbell
John and Diana Fedak

Case No. 92-01631

Case No. 92-01632

Name of Respondent(s)

Smith Barney Harris Upham & Co., Inc.

REPRESENTATION

For Claimants, Johanna Campbell ("Campbell") and John and Diana Fedak ("the Fedaks"): Arthur Schwartzstein, Esq. of the Law Offices of Arthur Schwartzstein, Esq.

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

CASE INFORMATION

Statements of Claim filed: May 12, 1992. Claimants' Submission Agreements signed: May 6, 1992 by Campbell and the Fedaks.

Respondent's Statement of Answer filed: July 13, 1992. Respondent's Submission Agreement signed: July 9, 1992 by Paul Barenholtz on behalf of Smith Barney.

HEARING INFORMATION

On February 11, 1993 and February 19, 1993, in Tampa, Florida, pre-hearing conferences lasting two sessions were conducted via telephone conference call with an arbitrator.

On February 22, April 13 and April 14, 1993, in Tampa, Florida, hearings lasting six sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent was liable for the actions of Smith Barney's employee in recommending the purchase of certain stock which was not suitable for Claimants. Claimants alleged that the broker made unauthorized purchases; failed to advise Claimants of the risks of investing on margin; failed to advise Claimants of the speculative nature of the investments; and, failed to advise Claimants that the stocks' issuer was under investigation by the SEC.

Respondent denied all allegations of wrongdoing and alleged that: Claimants did not claim that later purchases of the stock were unauthorized and, in fact, all trades were authorized.

Respondent alleged the Affirmative defenses of: failure to state a claim; waiver; estoppel; laches; ratification; statutes of limitations; the damages Claimants have requested are not available as a matter of law; and, Claimants were aware of the risks.

RELIEF REQUESTED

Claimant, Campbell, requested damages in the amount of \$61,393.57, plus interest, costs, attorney's fees, treble damages, and other punitive damages. The Fedaks requested damages of \$19,893.60, plus interest, costs, attorney's fees, treble damages, and other punitive damages plus \$1,000,000 for intentional infliction of emotional distress.

Respondent requested dismissal of the claims.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Smith Barney, is found liable and shall pay to Claimant, Campbell, the amount of \$61,393.57.
2. Respondent, Smith Barney, is found liable and shall pay to Claimants, the Fedaks, the amount of \$19,893.60.
3. Respondent, Smith Barney, is found not liable for intentional infliction of emotional distress.

4. Claimants' requests for treble damages, interest, and punitive damages are denied.
5. Respondent, Smith Barney, is also found liable for attorney's fees, the amount of which shall be determined by a court of competent jurisdiction.

OTHER COSTS

1. Respondent, Smith Barney, is also found liable for expert witness, copying, and other costs and shall pay to Claimants the further amount of \$3,894.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,100 (two pre-hearing conferences x \$300 plus six sessions x \$750 per session).
2. Respondent, Smith Barney, is hereby assessed \$5,100, \$750 of which shall be paid directly to Campbell and \$320 of which shall be paid directly to the Fedaks, and \$4,030 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fees of \$200 paid by the Fedaks and \$200 paid by Campbell.
4. Respondent shall reimburse the Fedaks the \$200 non-refundable filing fee and shall reimburse Campbell \$200 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

/s/
Constance J. McCaughey, Esq.

Public

/s/
Kjell W. Pettersen

Industry

/s/
Robert M. Shavick, Esq.

Public

Date of Decision: July 9, 1993