

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas W. Brice, indiv. and as executor

92-01680

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
John B. Davidson

REPRESENTATION

For Claimant, Thomas W. Brice ("Brice"): Robert D. McDonnell, Esq.

For Respondent, Smith Barney, Harris Upham & Co., Inc. ("Smith Barney"):
Larry A. Irom, Esq. of Smith Barney.

Respondent, John B. Davidson ("Davidson"): pro se.

CASE INFORMATION

Statement of Claim filed: May 18, 1992.

Claimant's Submission Agreement signed on: May 27, 1992.

Statement of Answer filed by Respondent, Smith Barney on: July 31, 1992.

Respondent, Smith Barney's Submission Agreement signed on: July 30, 1992 by
Larry A. Irom, Esq. on behalf of Smith Barney.

Respondent, Davidson's, Statement of Answer submitted: May 4, 1993.

Respondent, Davidson's Submission Agreement signed on: May 3, 1993.

HEARING INFORMATION

On May 4, 1993, in Charlotte, N.C. a hearing lasting two (2) sessions was
conducted.

CASE SUMMARY

Claimant alleged that Respondent, Smith Barney, through its agent, Respondent, Davidson, churned Claimant's account. More specifically, Claimant alleged that Davidson presented him with a "Margin and Options Account Agreement" the mere proposal of which by Davidson was alleged to be clearly inconsistent with Claimant's conservative investment objective. Claimant alleged that Davidson clearly failed to outline the specific risks associated with such an account. Claimant further alleged that Davidson specifically traded securities in Claimant's account in order to maximize his commissions.

Respondent, Smith Barney, denied all allegations of wrongdoing and alleged that Claimant made the investment decision to open a margin and options account after speaking with Davidson and that upon information and belief, Davidson discussed with Claimant trading on margin and options trading and that Claimant received literature explaining margin and options trading as well as confirmations of each transaction and monthly statements.

Respondent, Davidson denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant is a sophisticated investor and that he (Davidson) explained the pros and cons of investing in options, particularly covered call writing to Claimant and that Claimant was provided with Options Disclosure booklets. Davidson further alleged that at no time did he state that there was no risk related to option trading and that he never assumed management of Claimant's accounts.

RELIEF REQUESTED

Claimant requested damages of \$135,000.00 including compensatory and punitive damages.

Respondent, Smith Barney requested dismissal of the Claim as well as reasonable attorneys' fees and costs.

Respondent, Davidson, requested dismissal of the Claim and that legal costs of \$1,000.00 be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

1. Prior to the commencement of the hearing, the arbitrators were notified that the Claimant had settled with Respondent, Smith Barney and the hearing would proceed against Davidson only.

2. At the hearing, the arbitrators considered Claimant's Motion to Preclude Respondent Davidson from filing an Answer pursuant to Section 25 of the NASD Code of Arbitration Procedure and denied said Motion, thereby accepting Respondent, Davidson's Statement of Answer at the hearing.

3. 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.

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. Respondent, John B. Davidson, is found liable and shall pay to the Claimant the amount of \$21,778.34, plus interest at the legal rate of 8% per annum from 5/1/90 to 5/1/93 in the amount of \$5,226.80 for a total due to Claimant of \$27,005.64.

2. Claimant's request for punitive damages is hereby denied.

OTHER COSTS

The parties shall bear their own costs and expenses incurred in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,500.00 (two (2) hearing sessions X \$750.00).

1. Claimant is hereby assessed forum fees of \$750.00 for which the NASD shall retain the \$750.00 previously deposited in full satisfaction thereof.

2. Respondent, Davidson, is hereby assessed forum fees of \$750.00 payable to the NASD, Inc.

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3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

C. Jerome Leonard, Jr., Esq.
(Public/Chairman)

/s/

Daniel Goldstein, Esq.
(Public/Panelist)

/s/

William W. Marchant, Jr.
(Industry/Panelist)

Date of Decision: July 27, 1993