

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sandra Bender

92-02080

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Richard T. Carlin, Jr.
John Maine
Ronald H. Reisman

REPRESENTATION

For Claimant Sandra Bender ("Claimant"): Claimant originally appeared pro se. On April 19, 1993, Claimant retained counsel: A. Charles Peruto, Attorney at Law.

For Respondents Smith Barney Harris Upham & Co., Inc. (n/k/a Smith Barney Shearson, Inc.), Richard T. Carlin, Jr., John Maine and Ronald H. Reisman: David S. Friedman, Vice President Law Department at Smith Barney Shearson, Inc.

CASE INFORMATION

Statement of Claim filed: June 19, 1992
Amended Statement of Claim filed: January 12, 1993
Original Submission Agreement signed on: June 18, 1992
Amended Submission Agreement signed on: February 2, 1993
Claimant's reply to Carlin's counterclaim filed: July 12, 1993

Joint Statement of Answer filed by Respondents Smith Barney Harris Upham & Co., Inc. ("Smith Barney"), Richard T. Carlin, Jr. ("Carlin") and John Maine ("Maine") on: August 28, 1992
Smith Barney's Submission Agreement signed on: August 17, 1992
Carlin's Original Submission Agreement signed on: August 20, 1992
Carlin's Amended Submission Agreement signed on: January 11, 1993

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Maine's Submission Agreement signed on: January 11, 1993
Carlin's Counterclaim filed: April 30, 1993
Reisman's Submission Agreement signed on: March 1, 1993
Reisman's Statement of Answer and Motion to Dismiss filed: March 18, 1993

HEARING INFORMATION

Pre-Hearing Conference:

March 11, 1993 - one session
March 17, 1993 - one session
April 15, 1993 - one session

Hearing Dates/Sessions:

March 24, 1993 - three sessions
March 25, 1993 - three sessions
April 2, 1993 - two sessions
June 29, 1993 - two sessions
June 30, 1993 - three sessions
July 27, 1992 - two sessions
June 28, 1993 - one session
June 29, 1993 - two sessions
October 27, 1992 - three sessions
October 28, 1993 - two sessions
October 29, 1993 - two sessions

Hearing Location: Philadelphia, Pennsylvania

CASE SUMMARY

Claimant alleged, among other things, that Respondents breached their contract with her. Claimant alleged that Respondents intentionally interfered with her employment. Claimant alleged non-payment of commissions in violation with New Jersey wage payment law. Claimant alleged wrongful termination, in violation of Title VII of the Federal Civil Rights Act of 1964, gender (female) and race (Jewish) discrimination and violation of public policy. Claimant alleged intentional infliction of emotional distress, interference with advantageous business relationships, failure to execute sell orders, slander, libel, falsification of U-5 and negligent supervision. Claimant alleged that Respondent Smith Barney terminated her on the basis of gender and race discrimination. Claimant alleged that the compensation letter offered to her at the time of her employment represented an employment contract which Respondents breached upon termination. Claimant

asserted that this letter in addition to Smith Barney's desk top compliance manual and the employee handbook modified the employee at will doctrine in the state of New Jersey and thus as a matter of public policy could only be terminated for cause.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained, among other things, that Claimant's employment was terminable at will under the laws of New Jersey and that New Jersey recognizes "at will" employment. Respondents further maintained that Claimant was terminated "for cause" due to her failure to comply with the securities laws which protect customers rights, repeated violations of several important Firm policies and her extremely difficult and insubordinate personality.

Respondent Carlin counterclaimed asserting that Claimant had repeatedly and recklessly defamed his reputation by using the printed word as well as through conversation, including Claimant's portrayal of Respondent Carlin in a trade journal article, Financial Planning on Wall Street, Fall 1992 issue.

Claimant responded to Carlin's counterclaim and denied the allegations in the counterclaim. Claimant maintained, among other things, that all she did was to repeat what actually happened to her.

RELIEF REQUESTED

Claimant requested compensatory damages of \$125,000 for failure to execute trades in her accounts, \$55,101 in commissions, \$50,000 for premature withdraw from Claimant's retirement account due to Falsification of U-5. Claimant also introduced damage calculations through expert testimony requesting compensatory damages in addition to the ones listed above for the difference in potential earnings capacity due to wrongful termination at \$2,489,157 for the 20 year "catch-up" provided in the expert's amended version. Claimant's total claims are as follows: compensatory damages in the amount of \$2,719,258, plus punitive damages in the amount of \$8,157,774, plus interest, attorney fees, incidental and consequential damages and costs.

Respondents requested that Claimant's claim be dismissed in its entirety and that the Panel Award Respondents all costs and fees associated with defending this claim.

Respondent Carlin requested compensatory damages in the amount of at least \$3,000,000 on his counterclaim.

Claimant requested dismissal of Carlin's counterclaim with judgment in her favor.

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.

Respondent Reisman, in his answer, filed a Motion to Dismiss which was denied by the Panel. Respondent Maine, who lives in California and is not currently registered with the NASD, initiated a Motion to Dismiss and to be excused from attending these proceedings. The Motion was denied, however, he was excused from attending the proceedings so long as he made himself available via telephone conference facilities should the Panel so request.

Respondent Carlin's filed his counterclaim pursuant to Section 39 (b) of the Code of Arbitration Procedure (the "Code"), Claimant in her response made a motion to dismiss Carlin's counterclaim. The Panel ruled to allow the counterclaim.

AWARD

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

1. The Claimant's claims against Respondents Ronald Reisman, John Maine and Richard T. Carlin are denied in their entirety.
2. The Panel finds there was justification for the termination of Claimant based on its review of the unsuitability of certain of Claimant's recommendations. The Panel finds that Respondent acted in the best interest of the investing public at large. The Panel is equally unanimous in its finding that discrimination played no role in this case. However, the Panel believes that Respondent Smith Barney failed to meet an appropriate procedural business-like standard when terminating the Claimant. Thus, the Panel awards Claimant \$35,901 in unpaid commissions

plus interest in the amount of \$7,539.21. In addition, the Panel awards Claimant \$26,413.20 as Severance Compensation without interest. All totaled, Respondent Smith Barney is liable to Claimant and shall pay to Claimant the sum of \$69,843.41.

3. As to the counterclaim, Respondent/Counter-Claimant Carlin is awarded \$7,500 to be paid by Claimant Bender. Claimant Bender is directed to cease and desist the use of the article in question in its original or copied form or by verbal reference.

4. All parties shall bear their respective costs and attorney's fees, except for as specifically addressed herein.

5. Claimant's claim for punitive damages is denied in its entirety.

6. All other claims and counterclaim claims not specifically addressed above are denied in their entirety.

7. All postponement fees previously deposited and submitted by the parties shall be retained by the NASD.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

25 sessions X \$1,500 = \$37,500
plus 3 pre hearing conferences X \$300 = \$900
Net due as forum fees is \$38,400

Forum fees Assessed Against: The Panel has determined that forum fees shall be equally borne between Claimant Bender and Respondent Smith Barney. Claimant Bender is assessed forum fees in the amount of \$19,200, however, Claimant is entitled to offset this amount with her previously deposited hearing session deposit of \$1,500 so that the amount due from Claimant is \$17,700. Respondent Smith

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Barney is assessed forum fees in the amount of \$19,200.

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

Concurring Arbitrator's Signature
Name

Public/Industry


Charles H. Boyd

Date of Decision: December 27, 1993

NASD Date of Decision: January 4, 1994

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

Concurring Arbitrator's Signature
Name

Public/Industry


Clifford A. Harwick

Date of Decision: January 4, 1994

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Barney is assessed forum fees in the amount of \$19,200.

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

Concurring Arbitrator's Signature
Name

Public/Industry

Bernard Bujak
Bernard Bujak

Date of Decision: 12-31-93

NASD Date of Decision: January 4, 1994