

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Kurt J. Meister and Kathi A. Kuehnel

92-04110

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Craig Frank

REPRESENTATION

For Claimant: Anthony V. Trogan, Esq. of Weissman, Trogan, Young & Schloss.

For Respondents, Smith Barney, Harris Upham & Co. Incorporated (now known as Smith Barney Shearson Inc.) and Craig Frank: Hugh M. McGovern Esq. of Smith Barney Shearson.

CASE INFORMATION

Statement of Claim filed: December 4, 1992.

Claimants' Submission Agreement signed on: October 29, 1992.

Joint Statement of Answer filed by Respondents, Smith Barney, Harris Upham & Co. Incorporated and Craig Frank on: February 5, 1993.

Respondent, Smith Barney, Harris Upham & Co., Incorporated's Submission Agreement signed on: March 11, 1993.

Respondent, Craig Frank's Submission Agreement signed on: February 16, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: November 9, 1993 - Two Sessions.
November 10, 1993 - Two Sessions.

Hearing Location: American Arbitration Association - Southfield, MI.

CASE SUMMARY

Claimants alleged that Claimant, Kurt Meister ("K. Meister") received a cold call from Respondent, Craig Frank ("Frank") who was employed at Respondent, Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney"). Claimants allege that Frank asked K. Meister to open an account and told him that Smith Barney's research was the best on the street. Claimants allege that K. Meister terminated the conversation after listening to a recommendation about Glaxo. Claimants allege that Frank contacted K. Meister several months later and told him that Smith Barney had accurately predicted an increase per share in Glaxo. Claimants allege that K. Meister agreed to open an account and purchased 500 shares of Glaxo.

Claimants allege that Frank suggested to K. Meister that he engage in a covered option writing program and that K. Meister initiated the program with 2,000 shares of Centocor. Claimants allege that no real consideration was given to the fundamentals of the security itself. Claimants allege that when the price of Centocor dropped, permitting the call options to expire or be covered profitable, Frank changed his strategy, abandoned the technical analysis and touted Centocor as a "hold" based on favorable fundamentals.

Claimants allege that Frank induced K. Meister to engage in a call writing strategy with Data General which followed the same pattern. Claimants allege that Frank failed to implement the call writing strategy properly and was attempting to avoid realizing a loss in the account. Claimants allege that Frank announced that he was leaving Smith Barney and cautioned K. Meister not to believe what his new Smith Barney broker would tell him about his positions. Claimants allege that the newly assigned broker was indeed critical of Frank and his recommendations, and that K. Meister, in frustration, closed his account.

Respondents maintain that K. Meister is a securities attorney and represented to the Respondents that he was an experienced investor with a large salary and substantial net worth. Respondents maintain that shortly after the account was opened, K. Meister signed an options agreement by which he confirmed his financial situation and experience.

Respondents maintain that K. Meister took a large position in the company Centocor, and later in the companies Data General and Syntex, all Smith Barney recommendations. Respondents maintain that all of the foregoing stocks declined in price and that Frank recommended that K. Meister not sell the securities, as Smith Barney was continuing to recommend their purchase. Respondents maintain that the Claimants' new account executive kept K. Meister advised of his positions and Smith Barney's opinion on the stocks, which was positive in each case.

RELIEF REQUESTED

Claimants requested damages in the amount of \$171,728.00, plus interest at the rate of 12%, costs, attorneys fees, exemplary and punitive damages.

Respondents requested that the Claim be dismissed and that all costs and expenses should be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The Respondents asserted an oral Motion to Dismiss the claims involving Centocor pursuant to Section 12(d)(2) of the Code of Arbitration Procedure, since the Claimants are part of a class action involving the company. Claimants responded that pursuant to Section 12(d)(2), the claim in arbitration is not encompassed in the subject of the class action.

A majority of the panel ruled at the hearing that the claims involving Centocor will be part of the arbitration.

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

- 1) The Claim is hereby dismissed in its entirety. The request for punitive damages is hereby dismissed.
- 2) Each party shall bear their respective costs of this action, including attorneys fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

\$200.00	Non-refundable filing fee
\$3,000.00	Hearing session fees (4 sessions x \$750.00)

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Total Forum Fees in the amount of \$3,200.00 shall be apportioned as follows:

- 1) Claimant is hereby assessed fees in the amount of \$2,133.00. Claimant is entitled to offset this amount with the \$950 previously deposited with the NASD. Claimant is directed to pay the balance of \$1,183 to the NASD, Inc.
- 2) Respondent, Smith Barney is hereby assessed fees in the amount of \$1,067.00 and is directed to pay this amount to the NASD, Inc.

Concurring Arbitrator's Signature

Name

Industry Arbitrator


Harvey Frank

Date of Decision: December 6, 1993

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- 2) Respondent, Smith Barney is hereby assessed fees in the amount of \$1,067.00 and is directed to pay this amount to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Public Arbitrator



Richard G. Porter, Esq.


Date of Decision: December 6, 1993

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Concurring Arbitrator's Signature
Name

Public Chairperson


Jeffrey M. Bauer, Esq.

Date of Decision: December 6, 1993