

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Fritz Vogelmann

93-00098

Names of Respondents

Smith Barney Harris Upham & Co., Inc.

Christopher J. Conroy

Raymond R. Rapaglia

REPRESENTATION

Claimant, Fritz Vogelmann was represented by Paul J. Suzsman, Esq. of Chicago, Illinois.

Respondents, Smith Barney, Inc. and Christopher J. Conroy were represented by Linda R. Alpert, Esq. of Smith Barney, Inc., New York, New York.

Respondent, Raymond R. Rapaglia did not enter an appearance.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on January 7, 1993.

Claimant, Fritz Vogelmann's Submission Agreement was signed on December 28, 1993.

A Joint Statement of Answer and Motion to Dismiss was filed with the NASD by Respondents, Smith Barney, Inc. and Christopher J. Conroy on March 3, 1993.

Respondent, Smith Barney, Inc.'s Submission Agreement was signed on March 3, 1993 by Linda R. Alpert, Vice President, Smith Barney Harris Upham & Co, Inc. and Respondent, Christopher J. Conroy's submission agreement was

signed on March 4, 1993.

Vogelmann filed a response to the motion to dismiss with the NASD on April 6, 1993.

Respondent, Raymond R. Rapaglia did not file and answer to the Claim or a submission agreement with the NASD.

HEARING INFORMATION

The Hearing was held on July 22, 1993 and lasted for a total of two (2) hearing sessions.

The Hearing Location was Chicago, Illinois.

CASE SUMMARY

Claimant, Fritz Vogelmann ("Vogelmann") alleged that his account was charmed by Respondents, Smith Barney, Inc. ("Smith Barney"), Raymond R. Rapaglia ("Rapaglia") and Christopher J. Conroy ("Conroy"). Vogelmann asserted that speculative common stocks were recommended and purchased for his account and that he was not consulted prior to the purchase or sale of all the securities transactions effectuated in his account. Vogelmann asserted that material misrepresentations or omissions of material facts were made to him by the Respondents. These included but were not limited failing to disclose the risks associated with trading on margin and in trading in speculative common stocks. This activity was alleged to be violative of the state and federal securities laws, the federal racketeering statute, violation of common law fraud and breach of fiduciary obligation owed Vogelmann. Vogelmann also alleged that the stocks purchased for his account were unsuitable and that Smith Barney failed to adequately supervise the activities of its brokers.

Smith Barney and Conroy alleged that Vogelmann's account was not charmed as only eight stocks were purchased for Vogelmann's account over a two year period. Vogelmann also allegedly authorized all trades in his account and the securities purchased for him were suitable for him given his stated investment objectives. In addition Vogelmann also allegedly failed to complain about the trading in his account as he should have pursuant to the terms of his agreement with Smith Barney. In the motion to dismiss, Smith Barney and Conroy alleged that the claim was impermissibly vague and full of conclusory allegations and that the claims based upon federal law were time barred.

Vogelmann denied that the claim was vague.

Rapaglia did not file an answer to the claim.

RELIEF REQUESTED

Vogelmann requested compensatory damages in the sum of at least \$17,600, attorney's fees, forum fees, costs interest at the legal rate and treble damages.

Smith Barney and Conroy requested dismissal of the claim in its entirety and assessment of costs and sanctions against Vogelmann.

Rapaglia did not request any relief because he did not answer the claim.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrators determined to proceed with the hearing in the absence of Respondent, Raymond Rapaglia pursuant to Section 29 of the NASD Code of Arbitration Procedure ("NASD Code"), finding that the NASD had attempted to give him notice of the claim and hearing date in accordance with Sections 25 and 26 of the NASD Code. In addition, the arbitrators found that Rapaglia was obligated to arbitrate this dispute in accordance with Section 12 of the NASD Code.

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 motion to dismiss is denied;
2. Smith Barney and Conroy are jointly and severally liable for and shall pay to Vogelmann, the sum of One Thousand Six Hundred Dollars and No Cents (\$1,600.00) for the purchase of Texas Air stock;
3. Smith Barney and Rapaglia are jointly and severally liable for and shall pay to Vogelmann, the sum of Three Thousand Four Hundred Dollars and No Cents (\$3,400.00) for the purchase of Xerox stock; and,

4. All other claims including those for interest, costs attorney's fees and treble damages are dismissed in their entirety.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$700.00 hearing session deposit paid by Vogelmann to the NASD. Smith Barney is assessed additional Forum Fees in the sum of \$700.00 and shall directly reimburse Vogelmann in the amount of \$950.00 deposit made with the NASD.

Forum Fees were assessed at the rate of \$700.00 per hearing session for two (2) hearing sessions and are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

<u>/s/ James D. Martin</u>	<u>August 27, 1993</u>
James D. Martin, Esq.	Dated
Presiding Chairperson	
Public Arbitrator	

<u>/s/ Michael S. Matek</u>	<u>August 27, 1993</u>
Michael S. Matek	Dated
Panelist	
Public Arbitrator	

<u>/s/ Frank F. Foys</u>	<u>August 27, 1993</u>
Frank F. Foys	Dated
Panelist	
Industry Arbitrator	

Date award served on the parties: AUGUST 30 93