

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Gilbert

vs.

Award
#93-02372

Name of Respondents

Shearson Lehman Brothers, Inc.
Smith Barney Harris Upham & Co., Inc.
Louis M. Riccardi, Jr.

REPRESENTATION

For Claimant, John Gilbert ("Claimant"), Bruce E. Baldinger, Esq., located in Sommerville, New Jersey.

For Respondents, Smith Barney Harris Upham & Co., Inc. ("Smith Barney"), Shearson Lehman Brothers, Inc. ("Shearson") and Louis M. Riccardi, Jr. ("Riccardi"), Judith G. Greene, Esq., in-house counsel at Smith Barney in New York, New York.

CASE INFORMATION

Statement of Claim was filed on June 8, 1993.
Claimant's Submission Agreement was signed on March 29, 1993.
First Amended Statement of Claim was filed on July 23, 1993.

Joint Statement of Answer and Motion to Dismiss was filed by Smith Barney and Riccardi on August 11, 1993.

Smith Barney's Submission Agreement was signed on August 11, 1993.
Riccardi's Submission Agreement was signed on August 19, 1993.
Shearson's Submission Agreement was signed on August 23, 1993.

HEARING INFORMATION

Pre-Hearing Conference: May 17, 1994 - 1 session

Hearing Dates/Sessions: May 18, 1994 - 2 sessions
 May 19, 1994 - 2 sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant alleges that in 1983, he purchased a single premium deferred annuity with Executive Life Insurance Co. for \$75,000. Claimant also alleges that Riccardi represented that investment was consistent with Claimant's investment objective, in that, withdrawal would not be subject to tax or penalty. Claimant further alleges that he later withdrew the \$75,000 after confirming with Riccardi and Smith Barney ("Respondents") that the transfer would be non-taxable. Claimant states that he later received a 1099-R from Executive Life which indicated that taxes and penalties would be assessed against him and Respondents acknowledged that they had misinterpreted the tax ramifications.

Claimant contends that Respondents had a fiduciary relationship with Claimant, that they made misrepresentations and omissions, that Smith Barney inadequately supervised Riccardi, that Respondents violated the anti-fraud provisions of the Securities and Exchange Act of 1934, as amended and N.J.S.A. 49:3-71, and that Respondents breached their contract.

Respondent Smith Barney moved to dismiss the allegations concerning the purchase of the annuity in 1983, based upon the fact that Claimant purchased the annuity through E.F. Hutton. Respondents contend that although the transfer was made when the account was at Smith Barney, Claimant did not contact Riccardi until after Claimant had already withdrawn the \$75,000.00 directly from Executive Life Insurance Company.

Respondents deny each and every allegations stated in the Statement of Claim and assert eight affirmative defenses.

RELIEF REQUESTED

Claimant requests an award of \$34,773.00 for full restitution of losses; for pre-award and post-award interest; for costs, attorney's fees and expert fees; and for such other relief as the panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Respondents requested and was granted a postponement of the hearing that was scheduled for March 14, 1994. This panel assessed a \$400.00 postponement fee against Respondents.

AWARD

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

1. All claims asserted by Claimant against Respondents are dismissed.
2. All other claims for relief are denied.

FORUM FEES

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

Non-refundable Filing Fee: \$120.00

Hearing Session Fee: \$400.00 x 4 sessions = \$1600.00

Pre-Hearing Conference: \$300.00 x 1 session = \$300.00

Total Fees: \$2,020.00

1. Claimant previously paid \$520.00 and owes a balance of \$1,000.00.
2. Respondent Riccardi is assessed \$500.00 in forum fees.

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

ARBITRATION PANEL

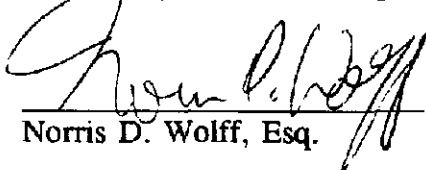
Norris D. Wolff, Esq. - Public Chairperson

Edwin P. Brooks - Public Panelist

Larry A. Kimmel

- Industry Panelist

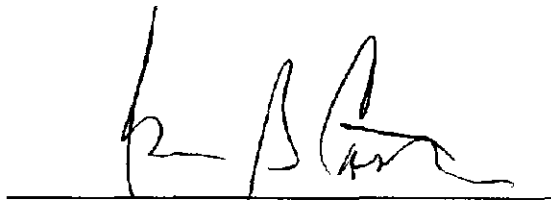
Concurring Arbitrator's Signature


Norris D. Wolff, Esq.

Date of Decision: June 29, 1994

State of NEW YORK s.s.:
County of New York

On this 1th day of June, 1994, before me personally appeared Norris D. Wolff known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



BARBARA S. CASTELLI
Notary Public, State of New York
No 31-4826076
Qualified in New York County
Commission Expires June 30, 1994

Award #92-02372

Page 4

Larry A. Kimmel

Industry Panelist

Concurring Arbitrator's Signature

Larry A. Kimmel
Larry A. Kimmel

Date of Decision: June 29, 1994

State of New York s.s.:
County of New York

On this 20TH day of June, 1994, before me personally appeared Larry A. Kimmel known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Linda M. Sulenti

LINDA M. SULENTI
Notary Public, State of New York
No. 015U-4684505
Qualified in Queens County
Term Expires: 8/31/94

Larry A. Kimmel

- Industry Panelist

Concurring Arbitrator's Signature

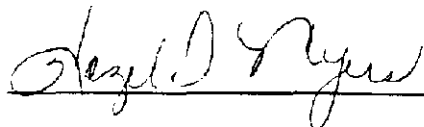


Edwin P. Brooks

Date of Decision: June 29, 1994

State of N.J. s.s.:
County of Morris

On this 21st day of June, 1994, before me personally appeared Edwin P. Brooks known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



HAZEL D. MYERS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 2/26/95