

11/95
N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Smith Barney

93-04508

Name of Respondent(s)

Gibraltar Securities Co.
David D'Arcangelo
Jeffrey Brewer McAleney

REPRESENTATION

For Claimant Smith Barney ("Smith Barney") appeared Anthony Paduano of the law firm Smith Campbell & Paduano located in New York, N.Y.

For Respondent Gibraltar Securities Co. ("Gibraltar") appeared Larry Nehr of the law firm Hannoch Weisman located in Roseland, New Jersey.

CASE INFORMATION

Statement of Claim filed: October 29, 1993.

No Submission Agreement was received from Claimant Smith Barney.

Statement of Answer and CounterClaim filed by Respondent, Gibraltar on: December 7, 1993.

No Submission Agreement was received from Respondent Gibraltar.

Claimant's Answer to Counterclaim amended Statement of Claim and Third-Party Claim was filed on December 21, 1993.

Respondent's Amended Statement of Counterclaim was filed on: July 20, 1994

Respondent's Second Amended Statement of Counterclaim was filed on: December 27, 1994

HEARING INFORMATION

Pre-Hearing Conference:	December 19, 1994	-	1 Session
	January 6, 1995	-	1 Session
	September 1, 1995	-	1 Session
Hearing Dates/Sessions:	July 28, 1995	-	2 Sessions
	September 8, 1995	-	2 Sessions

September 27, 1995	-	2 Sessions
September 28, 1995	-	2 Sessions

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that Matthew L. Zimmerman ("Zimmerman") was a representative registered with the National Association of Securities Dealers, Inc. Claimant alleged that Zimmerman had resigned his position as registered sales representative with Gibraltar to accept similar employment with Smith Barney. The Claimant disputes the validity of Zimmerman's contract of employment with Gibraltar barring him for a year from soliciting Gibraltar accounts for the purchase or sale of municipal securities and for 90 days from accepting employment with any other firm engaged in the sale of municipal securities.

Respondent alleged that the covenant barring competition in the ways specified was valid and should be enforced. The Respondent also alleged that Zimmerman violated his obligation under his contract of employment by delivering to Smith Barney records relating to Gibraltar customers which were integrated into Smith Barney data base and became the basis for the latter's solicitation of Gibraltar's customers.

RELIEF REQUESTED

Claimant requested that the Panel declare that it was not liable to Gibraltar in any respect and that the Panel grant Claimants such other and further relief as it deems just and proper.

Respondent requested compensatory damages for lost revenues totaling over \$500,000 gross, \$250,000.00 net. In addition, the Respondent sought punitive damages and substantial attorneys fees and costs. The Respondent also requested that Smith Barney be ordered to expunge from its records all the data contained in the Gibraltar records Zimmerman turned over to Smith Barney.

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.

The Parties agreed to an expedited arbitration.

The following persons were originally named as parties and subsequently withdrawn by the parties on December 5, 1994:

Matthew L. Zimmerman was originally named as a Claimant and Counterclaim Respondent.

David D'Arcangelo was originally named as a Third Party.

Jeffrey McAleney was originally named as a Third Party.

On September 5, 1995 the panel denied Smith Barney's application for an award dismissing Gibraltar's Amended Counterclaim.

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. All claims are dismissed in their entirety.
2. Each party is responsible for his own attorney fees.

FORUM FEES

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

Non-refundable filing fee:	\$ 500.00
Non-refundable counterclaim filing fee:	\$ 500.00
Hearing Sessions (6 @ \$1,000 per each session):	\$ 6,000.00
Non-refundable Expedited Surcharge:	\$ 5,000.00
Pre-hearing conferences (3 @ \$300 per session):	<u>\$ 900.00</u>

Total Fees: \$12,900.00

1. Smith Barney paid \$1,100.00 and owes \$5,350.00 to NASD.
2. Gibraltar paid \$2,500.00 and owes \$3,950.00 to NASD.

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

Concurring Arbitrators' Signatures
Name

Andrew C. Cote
Andrew Cote', Esq.
Chairperson

Industry

Domenick L. Natale, Esq.

Industry

Leon Goldsholl

Industry

AFFIRMATION

I, Andrew Cote', Esq., do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Andrew C. Cote
Andrew Cote', Esq.

Date of Decision: November 29, 1995


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1995
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Concurring Arbitrators' Signatures
Name

Andrew Cote', Esq.
Chairperson

Industry



Domenick L. Natale, Esq.


Industry

Leon Goldsholl

Industry

AFFIRMATION

I, Domenick L. Natale, Esq., do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.



Domenick L. Natale

Date of Decision: November 29, 1995

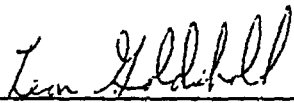
Concurring Arbitrators' Signatures
Name

Andrew Cote', Esq.
Chairperson

Industry

Domenick L. Natale, Esq.

Industry



Leon Goldsholl

Industry

AFFIRMATION

I, Leon Goldsholl, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.



Leon Goldsholl

Date of Decision: November 29, 1995