

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

L.E. Hester, Jr.

93-04626

Name of Respondents

Smith Barney Shearson, Inc.
John M. Capito, Jr.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 8, 1993, Claimant L.E. Hester, Jr., who appeared Pro Se, alleged that Respondent John M. Capito, Jr. ("Capito"), who was an account executive with Respondent Smith Barney Shearson, Inc. ("Shearson"), contacted him and persuaded him to purchase 2,750 shares of Teliconcics, Inc. stock. Claimant further alleged that Respondent Capito made several positive representations concerning Teliconcics, Inc., and that none of these events ever took place. Claimant contended that soon after Respondent Capito persuaded Claimant to purchase the Teliconcics, Inc. stock, Respondent Capito resigned from Respondent Shearson and either became affiliated with Teliconcics, Inc. or attempted to acquire the rights to the device which Teliconcics, Inc. was supposed to have brought to market. Claimant further contended that Respondents were either uninformed about or were biased toward Teliconcics, Inc. In his Amendment to his Statement of Claim, Claimant alleged that Respondents never gave him any annual reports, audited financial statements, SEC 10-K or 10-Q reports, or business plans concerning Teliconcics, Inc. Claimant further alleged that neither Respondent Capito nor Mr. Spartis of Respondent Shearson have been able or willing to provide him with mailing or telecommunications information concerning Teliconcics, Inc. In his response to Respondent Shearson's Answer, Claimant contended that he purchased all of his stock in Teliconcics, Inc. at \$3.00 per share. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondents Smith Barney Shearson, Inc. and John M. Capito, Jr., through Respondent Smith Barney Shearson, Inc.'s in-house counsel Madelyn A. Levy, Esq., New York, New York, maintained that Respondent Capito never advised Claimant that Teliconcics, Inc. was about to obtain a substantial line of credit, that commitments for several franchises were soon to be announced or that the company might be listed on the American Stock Exchange until after Claimant made his purchase of Teliconcics, Inc. stock. Respondents contended that Respondent Shearson, through Mr. Spartis, twice recommended to Claimant that he sell the Teliconcics, Inc. stock. Respondents further contended that Claimant was aware each month that the value of the stock was declining. Respondents maintained that Claimant never complained of being misled about the investment in question until over one year after the purchase was made. Respondents further maintained that all losses in Claimant's account were the result of his own deliberate and informed course of action coupled with adverse market conditions, and not any misconduct or mismanagement on the part of Respondent Shearson. Respondents contended they provided Claimant with the 1991 Audited Financial Statement, the 1991 annual report, SEC Form 10-Q and the 1992 Business Development Plan concerning Teliconcics, Inc. Respondents denied that Respondent Capito ever became "affiliated" with or "attempted to acquire the rights to the personal security device which Teliconcics was supposed to have brought to market." As a result of the above, Respondents contended that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant L.E. Hester, Jr. requested that Respondents purchase his 2,750 shares of Teliconcics, Inc. stock for the sum of \$8,646.50, pay him interest from the dates of purchase at an interest rate of 8% per annum, and pay him costs and fees.

Respondents Smith Barney Shearson, Inc. and John M. Capito, Jr. requested that the Claimant's Statement of Claim be dismissed in its entirety, and that costs and fees be awarded.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant L.E. Hester's Motion to Bar Defenses was considered by the arbitrator and was denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, James C. Bussart, Esq. was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 4, 1993, by Respondent Smith Barney Shearson, Inc. on January 17, 1994, and by Respondent John M. Capito, Jr. on July 11, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant L.E. Hester against Respondents Smith Barney Shearson, Inc. and John M. Capito, Jr. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, JAMES C. BUSSART, ESQ., do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 27, 1994