

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ben and Jane B. Rosen

vs.

93-05245

Name of Respondent

Smith Barney Shearson, Inc.

REPRESENTATION

For Claimants Ben and Jane B. Rosen ("Claimants") appeared Ben Rosen.

For Respondent Smith Barney Shearson, Inc. ("Respondent") appeared James Goddard, Esq., Associate General Counsel for Smith Barney Shearson, Inc.

CASE INFORMATION

Statement of Claim filed: December 20, 1993.

Claimant's Submission Agreement signed on: December 14, 1993.

Statement of Answer filed: March 4, 1994.

Respondent's Submission Agreement signed on: March 4, 1994.

HEARING INFORMATION

Hearing Date/Sessions: November 1, 1994 - 2 Sessions

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

CASE SUMMARY

Claimants alleged that they were clients of Respondent's Paramus, New Jersey office and that all of their business with Respondent was conducted through this office. Claimants alleged that the New York State Department of Taxation and Finance ("the Department of Taxation") served a levy on Respondent, through Respondent's New York office, garnishing funds held in Claimants' account with Respondent. Claimants further alleged that the levy was pursuant to a judgment obtained by the Department of Taxation against Claimants for the collection of Unincorporated Business Tax. Claimants alleged that there has never been reciprocity between New York and New Jersey for the collection of this tax and that the judgement was unenforceable. Claimants also alleged that Respondent wrongfully released the funds to the Department of Taxation.

Claimants alleged that Respondent was sent a letter from their attorney which stated that Respondents action was contrary to law and demanded that Claimants' funds be returned. Claimants further alleged that Respondent was their agent and as their agent had an obligation to act in their interests. Also, Claimants alleged that Respondent made no effort to prevent or question the levy, despite the fact that Respondent was advised that the Department of Taxation's action was without authority.

Respondent maintained that upon receipt of the levy, in or about July 1993, the Claimants were advised by Respondent that, unless further legal process was received by Respondent which demonstrated a basis to resist the garnishment, Respondent would comply with the levy. Additionally, Respondent maintained that they advised Claimants and their counsel that Respondent cannot represent the legal interests of their customers.

Respondent maintained that payment on the levy was delayed in order to give Claimants an opportunity to pursue any legal remedies. Respondent further maintained that, on or about October 15, 1994, Respondent received a letter from the Department of Taxation directing Respondent to remit the assets immediately and, therefore, Respondent forwarded to the Department of Taxation a check for \$16,117.84, representing funds held in Claimants account. Finally, Respondent maintained that their actions were in accordance with legal the process issued by the Department of Taxation with which Respondent had a duty to comply.

RELIEF REQUESTED

Claimants requested that an award be entered against Respondent for compensatory damages of \$16,117.84, attorneys fees in the amount of \$650.00, disbursements in the amount of \$86.50 and any additional costs incurred during the hearing.

Respondent requested that all claims against it be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

At the opening of the hearing, Respondent made a motion to dismiss the Statement of Claim as matter of law. The panel considered the request and ruled that it be denied.

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 of 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. All claims against the Respondent be and hereby are dismissed in their entirety.
2. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 filing fee and have assessed the following forum fees:

2 Sessions x \$400.00 = \$800.00 minus the hearing session deposit of \$400.00 = \$400.00 net due.

Respondent be and hereby is liable and shall pay to the NASD the sum of \$400.00 representing outstanding forum fees.

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

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, appearing to read "Neil J. Carey", is written over a horizontal line.

Neil J. Carey
Chairperson - Public Arbitrator

Murray I. Sommer, Esq.
Public Arbitrator

Herbert Z. Geiger, Esq.
Industry Arbitrator

NASD Date of Decision: December 19, 1994

STATE OF: *CONNECTICUT*

COUNTY OF: *FAIRFIELD*

SS: *STAMFORD*

On this *16th* day of *December*, 1994, before me personally appeared Neil J. Carey known and 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.

[Signature]

NOTARY PUBLIC
EXPIRES 6/30/98

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared Murray I. Sommer, Esq. known and 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.

STATE OF:

SS:

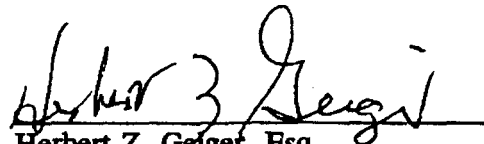
COUNTY OF:

On this day of , 1994, before me personally appeared Herbert Z. Geiger, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

ARBITRATORS' SIGNATURES

Neil J. Carey
Chairperson - Public Arbitrator

Murray I. Sommer, Esq.
Public Arbitrator



Herbert Z. Geiger, Esq.
Industry Arbitrator

NASD Date of Decision: December 19, 1994

STATE OF:

SS:

COUNTY OF:

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STATE OF:

SS:

COUNTY OF:

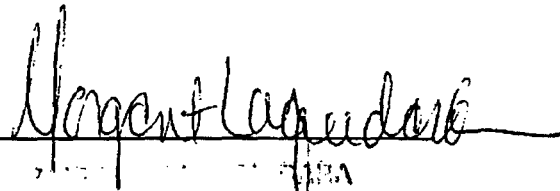
On this day of , 1994, before me personally appeared Murray I. Sommer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: NJ

SS:

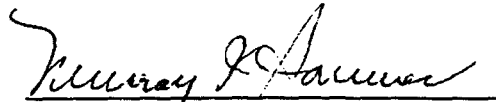
COUNTY OF: Bergen

On this 17 day of Dec , 1994, before me personally appeared Herbert Z. Geiger, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.


Margaret Lagudaro
Notary Public
New Jersey
My Commission Expires 12/31/99

ARBITRATORS' SIGNATURES

Neil J. Carey
Chairperson - Public Arbitrator



Murray I. Sommer, Esq.
Public Arbitrator

Herbert Z. Geiger, Esq.
Industry Arbitrator

NASD Date of Decision: December 19, 1994

STATE OF:

SS:

COUNTY OF:

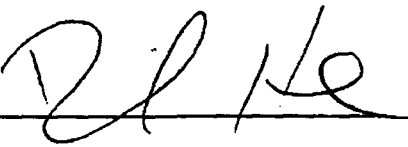
On this day of , 1994, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this 16th day of December, 1994, before me personally appeared Murray I. Sommer, Esq. known and 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.



DAVID HOWE
Notary Public, State of New York
No. 4827426 Rockland County
Term Expires July 31 1997

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared Herbert Z. Geiger, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.