

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

- Karen F. Schwartz,
Claimant,

v.

94-00503

Smith Barney Shearson, Inc.,
n/k/a Smith Barney, Inc.,
Respondent.

REPRESENTATION OF PARTIES

Claimant Karen F. Schwartz ("Claimant") was represented by David P. Oetting, Esq., of Curtis, Oetting, Heinz, Garrett & Soule, P.C., St. Louis, Missouri.

Respondent Smith Barney Shearson, Inc., n/k/a Smith Barney, Inc. ("Respondent") was represented by William A. Hohaus, Esq., of Smith Barney Inc., New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 9, 1994. Claimant's Submission Agreement was signed on February 7, 1994.

Respondent's Statement of Answer was filed on or about April 18, 1994. Respondent's Submission Agreement was signed on April 19, 1994.

HEARING INFORMATION

The hearing was held on: July 29, 1996 for one (1) session;
April 8, 1997 for two (2) sessions; and
April 9, 1997 for two (2) sessions.

The hearing was held in St. Louis, Missouri.

CASE SUMMARY

Claimant alleged that: Respondent, upon notice of the death of Bernard D. Feinstein ("Feinstein"), failed or refused to register an account, that was created as a joint tenancy account between Claimant and Feinstein, in Claimant's name pursuant to the Client Agreement (the "Agreement") and therefore has breached the Agreement; and despite Claimant's written instructions to the contrary, Respondent

permitted funds to be transferred out of the account by Feinstein without the consent and unbeknownst to Claimant.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that: Due to a dispute with Claimant, Feinstein determined to remove what were his assets to another account; Claimant signed a release and transfer authorization allowing Feinstein to remove and transfer the funds to another account; all of the withdrawals or transfers were appropriate and directed by the true owner of the assets; and the true dispute lay between Claimant and the Estate of Feinstein and not between Claimant and Respondent.

RELIEF REQUESTED

Claimant requested an award in the amount of \$332,139.07, plus interest, costs of this action, attorney's fees and such other relief as may be proper.

Respondent requested that the claims asserted against it be denied.

OTHER ISSUES CONSIDERED & DECIDED

On April 18, 1994, Respondent requested that this arbitration be stayed pending the conclusion of a State Court Action involving Feinstein and Claimant. After review of the request and Claimant's response, the Director of Arbitration denied Respondent's request.

In April of 1996, Claimant filed Motions to Bar, Direct Appearances and to Produce documents. After review of Claimant's motions, the response thereto, and deliberation, the undersigned arbitrators denied the motions.

On April 8, 1997, at the beginning of the hearing, Claimant made an oral motion pursuant to Rule 10314 of the Code of Arbitration Procedure (the "Code"). After hearing argument, and deliberation, the arbitrators denied the motion.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) Claimant's claims are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) sessions x \$750 = \$3,750 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Additional forum fees in the amount of \$750 are assessed by the arbitrators against Respondent.

Additional forum fees in the amount of \$1,500 are assessed by the arbitrators against the Claimant.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$750 previously deposited by Claimant as forum fees.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Herbert Lasky
Herbert Lasky
Public Arbitrator, Presiding Chair

/s/ April 16, 1997

William A. Geary, Jr.
William A. Geary, Jr.
Public Arbitrator

/s/ April 14, 1997

Dale W. Roth
Dale W. Roth
Industry Arbitrator

/s/ April 15, 1997