

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

Maurice M. Alexander,
MMA Cattle Company,
Los Seis Partnership and
Lois Seis Partnership

and

Case Number 95-00618

Names of Respondents

Smith Barney Shearson, Inc.,
Rauscher Pierce Refsnes, Inc. and
Mark Platt

REPRESENTATION OF PARTIES

Maurice M. Alexander, MMA Cattle Company, Los Seis Partnership and Lois Seis Partnership ("Claimants") were represented by Charles D. Powell, Esq. of Brown, Parker & Leahy from Houston, TX.

Smith Barney Shearson, Inc. ("Respondent") was represented by Harry Walters, Esq. of Smith Barney, Inc. from New York, NY.

Mark G. Platt ("Respondent") was represented by J. Michael Weston, Esq. of Bennett & Weston, P.C. from Dallas, TX.

CASE INFORMATION

The Statement of Claim was filed on or about February 3, 1995.

The Submission Agreement of Claimant, Maurice M. Alexander was signed on January 27, 1995.

The Submission Agreement of Claimant, MMA Cattle Company was signed on January 27, 1995 by Maurice M. Alexander, President.

The Submission Agreement of Claimants, Los Seis Partnership and Lois Seis Partnership was signed on January 27, 1995 by Maurice M. Alexander, Managing Partner.

The Statement of Answer of Respondent, Smith Barney, Inc. was filed on or about April 13, 1995.

The Submission Agreement of Respondent, Smith Barney, Inc. was signed on August 17, 1995 by Harry Walters, Senior Vice President.

The Statement of Respondent, Mark Platt was filed on or about April 13, 1995.

The Submission Agreement of Respondent, Mark Platt was signed on August 8, 1995.

HEARING INFORMATION

The hearing was held in Houston, TX on April 16, 17 and 18, 1996 for a total of seven (7) sessions.

CASE SUMMARY

In the Statement of Claim, Maurice M. Alexander ("Alexander"), MMA Cattle Company ("Cattle Co."), Los Seis Partnership ("Los Seis") and Lois Seis Partnership ("Lois Seis") alleged that the Respondents committed fraudulent and manipulative practices such as (1) directing and effecting excessive trades in Claimants' accounts and churning the accounts for the primary purpose of producing substantial amounts of commissions; (2) making and effecting unauthorized and discretionary trades in the Claimants' accounts without having been granted written discretionary authority and without implementing the appropriate procedures for handling a discretionary account; (3) directing and effecting unsuitable trades in the Claimants' accounts; and (4) misrepresenting or omitting to state material facts to the Claimants. As alleged, Mark Platt ("Platt") became the broker of Alexander's account at Rauscher Pierce Refsnes ("Rauscher Pierce") in January, 1993 and, shortly thereafter, secured control of all of the Claimants' accounts. According to Alexander, Platt induced him in May 1993 to transfer a significant portion of his other securities positions into Rauscher Pierce's custody and control. When Platt resigned from Rauscher Pierce in August 1993, the Claimants' accounts were transferred to Smith Barney Shearson, Inc. ("Smith Barney") after Platt completed the new account forms. Claimants asserted that from February 1993 to August 1993 at Rauscher Pierce and continuing at Smith Barney from August 1993 until the Spring of 1994, Platt engaged in a continuous and systematic course of unauthorized trading in the accounts since Alexander was not advised of the stock purchases before execution, had no knowledge of the securities purchased and had not discussed the investments with Platt. Claimants contended that Alexander was not able to effectively ratify the trades because of the continued deception by Platt regarding the profitability of specific trades and the accounts' general results and profitability. Claimants further contended that some of the securities purchased by Platt for Claimants were speculative and risky such as Electro Brain International Corp., Noise Cancellation Technologies,

Inc. and Pittencrief Communications. Claimants made other specific allegations against the Respondents including, but not limited to, breach of contract, negligence, breach of fiduciary duty, common law fraud, failure to supervise and violations of Federal and state securities laws, and violations of the rules and regulations of the National Association of Securities Dealers, Inc. and the New York Stock Exchange.

In its Answer, Smith Barney, Inc. denied all allegations of wrongdoing set forth in the Statement of Claim. Respondent, Smith Barney specifically stated that Alexander was a wealthy and experienced businessman and investor who told Platt that his account was to be a trading account in stocks and that Platt should look for stocks with the potential for large, quick appreciation. Smith Barney maintained that Alexander had an established record of short-term trading in stocks and a history of using margin to leverage the performance of the account. Smith Barney stated that Alexander consistently described his investment objectives to include growth and speculation and that Alexander was fully informed about the accounts and controlled the trading in the accounts. Smith Barney asserted many affirmative defenses including, but not limited to, failure to state a claim upon which relief can be granted; failure to mitigate damages; Claimants' comparative fault, lack of diligence and failure to conduct their own financial affairs bar recovery; Claimant ratified, approved, authorized and acquiesced in the transactions and are barred by laches, waiver and estoppel; and the trading was not excessive in light of the character of the accounts.

In his Statement of Answer, Mark Platt denied the allegations made by the Claimants. Platt asserted several affirmative defenses such as failure to state a claim; failure to mitigate; Claimants assumed any risk that caused the losses; the claims are barred by laches, waiver or estoppel; the losses suffered by Claimants were the result of market forces and not any wrongful conduct of Platt; and Platt did not control Claimants' trading decisions and did not engage in churning.

RELIEF REQUESTED

Claimants requested an award in the amount of \$1,623,608.00 for actual damages and \$1,600,000.00 in punitive damages as well as costs, expenses and attorneys' fees.

Respondent, Smith Barney, Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and fees.

Respondent, Mark J. Platt requested that the Claimants take nothing by their Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated May 11, 1995 from Claimant's counsel, the National Association of Securities Dealers, Inc. ("NASD") was notified that the Claimants had withdrawn without prejudice their claims against Respondent, Rauscher Pierce Refsnes, Inc. Therefore, Rauscher Pierce Refsnes, Inc. was removed as a party in this matter and did not appear at the hearing.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on 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. The Statement of Claim is hereby denied in its entirety;
2. The parties shall bear their own costs and expenses including attorneys' fees except for those costs specifically enumerated herein; and
3. All requests for relief not specifically granted are hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session. There were seven (7) sessions x \$1,000.00 = \$7,000.00 in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure (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 Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimants. Respondents, Smith Barney Shearson, Inc. and Mark G. Platt are hereby, jointly and severally, liable for and shall pay to the Claimants, Maurice M. Alexander, MMA Cattle Co., Los Seis Partnership and Lois Seis Partnership the amount of \$1,250.00 as reimbursement. Respondents, Smith Barney Shearson, Inc. and Mark G. Platt are hereby, jointly and severally, liable for and shall pay to the NASD the sum of \$6,000.00 in additional forum fees. In addition, Smith Barney Shearson, Inc. is liable for and shall pay to the NASD the \$500.00 member surcharge assessed in accordance with Section 45 of the Code.

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

Arbitrators' Signatures:

Dated:

Douglas F. Pierce, Esq.
Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair

June 12, 1996

Richard P. Flake, Esq.
Richard P. Flake, Esq.
Public Arbitrator

June 12, 1996

Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Industry Arbitrator

June 11, 1996

Date served by the NASD: June 18, 1996