

N.A.S.D. AMENDED AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

William H. Lowery and Judith H. Lowery

95-00679

Name of Respondents

Smith Barney Shearson, Inc.
Jeffrey W. Jones
First Montauk Securities Corp.
A.T. Brod & Company, Inc.

REPRESENTATION

For Claimants: Kalju Nekvasil, Esq. of the Law Offices of Goodman & Nekvasil, Safety Harbor, FL.

For Respondent A. T. Brod & Company, Inc.: Jilia Mold-Torres, Esq. of A.T. Brod & Company, Inc., Cleveland, OH.

Respondent Jeffrey W. Jones appeared pro se.

For Respondent Smith Barney Shearson, Inc.: William Hohausser, Esq. of Smith Barney, Inc., New York, NY.

For Respondent First Montauk Securities Corp.: John Grant, Esq. of Camby, Karlinsky & Stein, P.A., New York, NY.

CASE INFORMATION

Statement of Claim filed: February 9, 1995.

Claimants' Submission Agreement signed on: February 7, 1995.

Statement of Answer filed by Respondent A.T. Brod & Company, Inc. on: April 28, 1998.

Statement of Answer filed by Respondent Smith Barney Shearson, Inc. on: April 13, 1995.

Statement of Answer filed by Respondent First Montauk Securities Corp. on: April 28, 1995.

Respondent Jeffrey W. Jones did not file a Statement of Answer.

Respondents A.T. Brod & Company, Inc., Smith Barney Shearson, Inc., First Montauk Securities Corp.

and Jeffrey W. Jones did not file executed Submission Agreements.

HEARING INFORMATION

On January 22, 1998 the evidentiary hearing lasting one (1) session was conducted in Tampa, Florida.

CASE SUMMARY

Claimants alleged that Respondents executed numerous securities transactions in their accounts even though Claimants had not given Respondents account discretion. Claimants further alleged that the transactions were highly speculative, excessive and unsuitable and that as a result they lost in excess of \$200,000.00.

Respondents Smith Barney Shearson, Inc., First Montauk Securities Corp., and A.T. Brod & Company, Inc. denied the allegations set forth in the Statement of Claim.

RELIEF REQUESTED

Claimants requested treble damages and actual damages in excess of \$200,000.00 together with prejudgment interest at the legal rate of 12% from the date of purchase, benefit of the bargain damages, attorney's fees, punitive damages, costs, and such other relief as is deemed necessary and proper.

Respondents Smith Barney Shearson, Inc., First Montauk Securities Corp., and A.T. Brod & Company, Inc. requested that the Statement of Claim be dismissed in its entirety and that they be awarded their attorney's fees and costs to defend this action.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Section 10101 of the Code of Arbitration Procedure ("Code"), the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that Respondent A.T. Brod & Company, Inc. was a member firm of the NASD and Jeffrey W. Jones was an associated person with a member firm of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over Respondents A.T. Brod & Company, Inc. and Jeffrey W. Jones pursuant to Section 10301 of the Code.

In view of the above, the arbitration panel found that the Respondents A.T. Brod & Company, Inc. and Jeffrey W. Jones were required to file with NASD Regulation, Inc. properly executed Submission Agreements pursuant to Section 10314(b) of the Code. In this regard, the arbitration panel found that the Statement of Claim was properly served upon Respondents A.T. Brod & Company, Inc. and Jeffrey W. Jones pursuant to Section 10314(a) of the Code.

In addition, in accordance with Sections 10310, 10315 and 10318 of the Code, the arbitration panel found that NASD Regulation, Inc. provided Respondents A.T. Brod & Company, Inc. and Jeffrey W. Jones with "due notice" of the hearing conducted in this matter. The arbitration panel, therefore, determined to proceed with the hearing without Respondents A.T. Brod & Company, Inc. and Jeffrey W. Jones present.

Prior to commencement of the evidentiary hearing the arbitration panel was informed that Respondent Smith Barney Shearson, Inc. entered into a settlement agreement with the Claimants. In addition, the arbitration panel was informed that Claimants withdrew, with prejudice, all claims against Respondent

First Montauk Securities Corp.

The arbitration panel specifically finds that Respondent A.T. Brod & Company, Inc. violated the Florida Securities Protection Act, Section 517.301, F.S., in handling William H. Lowery's and Judith Lowery's accounts, as alleged in the arbitration claim.

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. Respondent A.T. Brod & Company, Inc. is found liable and shall pay to the Claimants \$145,636.68 in actual damages.
2. Each party shall bear their respective legal expenses.
3. Respondent A.T. Brod & Company, Inc. shall pay to the Claimants \$750.00 representing reimbursement of the hearing session deposit previously paid by the Claimants to NASD Regulation, Inc.
4. The Claimants' requests for punitive damages and treble damages are denied.
5. Respondent Jeffrey W. Jones is found not liable and all claims against him are dismissed.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$750.00 (\$750.00 x 1 session) against Respondent A.T. Brod & Company, Inc. for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited in full satisfaction thereof.

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

Concurring Arbitrators' Signatures:

Name	Public/Industry
/S/ _____ Thomas E. Greef	Public
/S/ _____ John R. Phillips, Esq.	Public
/S/ _____ William G. Kline	Industry

Date of Decision: 6/9/98