

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Helen F. Drake Revocable Trust,
Helen F. Drake, Trustee

Claimant

95-01093

v.

Smith Barney Shearson, Inc., and
Lee A. Weiss

Respondents

REPRESENTATION

Claimant Helen F. Drake Revocable Trust, Helen F. Drake, Trustee ("Claimant") was represented by Robert D. Mitchell, Esq., of Scottsdale, Arizona.

Smith Barney Shearson, and Lee Weiss ("Respondents") were represented by John P. Bevilacqua, Esq., Vice President, Assistant General Counsel, Smith Barney, New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 28, 1995. Claimant's Submission Agreement was signed on May 11, 1995.

Respondents' joint Statement of Answer was filed on or about April 20, 1995. Respondent, Lee Weiss' Submission Agreement was signed on May 8, 1995.

HEARING INFORMATION

The hearing was held at the Marriot Mountain Shadows Resort, in Scottsdale, Arizona, on August 31, 1995, for a total of three (3) sessions. A pre-hearing was held on August 28, 1995, for a total of one (1) session.

CASE SUMMARY

Claimant alleged that Respondents: Negligently advised her to invest in the securities purchased in her account; made unsuitable recommendations and investments in her account in violation of the Rules of Fair Practice, Article III, Section 2; breached their fiduciary duty to Claimant; breached their contract with Claimant; violated A.R.S. Section 44-1991 by committing securities fraud; violated Section 10(b) of the Securities and Exchange Act of 1934 and SEC Rule 10b-5; committed common law fraud through the numerous misrepresentations of fact or omissions of material fact to the Claimant in connection with her investments; made intentional misrepresentations to the Claimant; and made negligent misrepresentations to the Claimant. Claimant also alleged that Smith Barney failed to supervise the actions of Lee Weiss in violation of NASD Rules of Fair Practice, Article 3, section 27, and NYSE Rule 342.

In their joint Answer, Respondents denied all of the allegations of wrongdoing and asserted that Claimant was entitled to no relief whatsoever. In addition, Respondents asserted the following affirmative defenses: Claimant has failed to state a claim upon which relief may be granted; Respondents are not in violation of any rules, regulations, or applicable laws; there is no private right of action for alleged violations of the Rules of the National Association of Securities Dealers, Inc. (the "NASD") or the Rules of the New York Stock Exchange, Inc.; Claimant's claims; Claimant's claims are barred by the doctrine of ratification; Claimant failed to mitigate her damages; any losses allegedly incurred by the Claimant were caused by market forces beyond Respondents' control and also due to her own actions; and Claimant is not entitled to punitive damages.

RELIEF REQUESTED

Claimant requested an award of the following:

- A. Rescission and compensatory damages of at least \$26,400.00, plus interest;
- B. Recovery of her filing fees and such other cost and expense as may be incurred in bringing this arbitration;
- C. Attorneys' fees pursuant to A.R.S. Sections 12-341.01 and 44-2001;
- D. Punitive damages in an amount the arbitrators deem appropriate. Claimant submitted that the sum of \$20,000.00 to be a just amount; and
- E. Such other relief in favor of the claimant as the arbitrators deem just and appropriate under the circumstances.

Respondents requested that the Statement of claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Smith Barney did not file with the NASD a properly executed Submission to Arbitration. Smith Barney is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code"). Smith Barney has filed an Answer to the Claim, and has appeared at the hearing. Therefore, Smith Barney is bound by the determination of the panel on all issues submitted.

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 the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for, and shall pay to the Claimant the sum of \$23,768.00, plus interest at the statutory rate to begin running 30 days after the date of the Award, until paid.
2. Respondents are jointly and severally liable for, and shall pay to the claimant the sum of \$8,319.00 as an award of attorneys' fees.
3. Except as set forth in this Award, each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.
4. Any claim for relief, or request for an award not specifically covered herein, are, and each of them, denied and dismissed with prejudice.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed.

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each pre-hearing conference. There were three (3) hearing sessions @ \$400.00 each, and one pre-hearing conference session @ \$300.00 for a total of \$1,500.00 in forum fees to be assessed. Pursuant to Section 43(b) a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00 and shall refund the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant.

Additional forum fees in the amount of \$1,500.00 are assessed jointly and severally against the Respondents.

Pursuant to Section 45 of the Code, the NASD shall retain the nonrefundable member surcharge previously paid by Smith Barney.

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

Charles A. Finch
Charles A. Finch
Public Arbitrator, Presiding Chair

s/s

September 7, 1995

James C. Sell
James C. Sell
Public Arbitrator

s/s

September 18, 1995

Harold A. Shapiro
Harold A. Shapiro

s/s

September 11, 1995