

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Vladimir Ostromensky

95-01339

Name of Respondent

Smith Barney, Inc.

REPRESENTATION

Vladimir Ostromensky ("Claimant") was represented by A. Daniel Woska, Esq. of Woska, Hasbrook, Dowd, Underwood & Helms located in Oklahoma City, OK.

Smith Barney, Inc. ("Respondent") was represented by Gary Chilton, Esq. of Andrews, Davis, Legg, Bixler Milstein & Price located in Oklahoma City, OK.

CASE INFORMATION

The Statement of Claim was filed on or about March 16, 1995.

The Amendment to the Statement of Claim was filed on or about May 10, 1995.

Claimant's Submission Agreement was signed on March 8, 1995.

The Statement of Answer was filed on or about August 30, 1995.

Respondent's Submission Agreement was signed on August 30, 1995 by Marcie S. Mintz, Vice President.

HEARING INFORMATION

The hearing was held in Oklahoma City, OK on the following dates:

- January 16, 1996 for three (3) sessions
- January 17, 1996 for two (2) sessions
- January 18, 1996 for two (2) sessions

-February 2, 1996 for two (2) sessions

CASE SUMMARY

Vladimir Ostromensky ("Ostromensky") alleged that Smith Barney, Inc. ("Smith Barney") wrongfully terminated him in October, 1993 and ceased the Claimant's agency relationship with the firm based upon false assumptions and incorrect facts. Claimant was employed as an account executive by Smith Barney to sell securities on a commission basis. Ostromensky alleged that the Respondent knew or should have known the Claimant did not commit the serious act of which he was accused - misappropriation of a client's funds. Ostromensky contended that he explained the facts surrounding the transaction in question to the Respondent. According to the claim, the termination was done in violation of Oklahoma's public policy and has caused serious and real damage to Claimant's reputation in the industry. Ostromensky claimed that due to prejudice or vindictiveness, Smith Barney published and made defamatory statements and allegations about him to other employees, the Oklahoma State Employment Commission, the National Association of Securities Dealers, Inc. and future prospective employers. Ostromensky claimed that Smith Barney owed him money for commissions and other compensation on sales generated during his employment. Ostromensky made specific allegations against the Respondent including, but not limited to, breach of contract, breach of covenant of good faith and fair dealing, defamation, libel, breach of fiduciary duty, intentional infliction of emotional distress, tortious interference with existing contracts and tortious interference with prospective business.

Smith Barney, Inc. denied the allegations made by Ostromensky. The Respondent alleged that they terminated Claimant on October 26, 1993 based on Ostromensky's attempt to move stock positions to his own account from a client account after a stock had traded at a loss. According to the Respondent, Ostromensky entered an order on October 14, 1993 to buy certain shares of stock for a client; on October 21, 1994, Claimant was asked by the Respondent about the status of the money due to the account to cover the trade. As alleged, Claimant then notified the Branch Manager that the trade should have been for his own personal account yet the manager advised Claimant that the trade could not be corrected to his account. Respondent asserted the following affirmative defenses:

1. The Statement of Claim failed to state a claim upon which relief may be granted;
2. Claimant's claim was barred by the doctrines of laches and estoppel;
3. The damages allegedly suffered by Claimant had no causal relationship with any act committed by or legally attributable to Respondent;
4. Claimant's employment with Respondent was at will and therefore, there was no guarantee that his employment would continue for any specified period of time or end under certain conditions;
5. Any statements made by Respondent regarding Claimant were truthful and accurate;
6. Any statements made by Respondent regarding Claimant to the National Association of Securities Dealers, Inc. are privileged;
7. Any statements made by Respondent in the Form U-5 were privileged; and
8. Claimant's termination was based upon legitimate, non-discriminatory bases.

RELIEF REQUESTED

Claimant requested an award in an amount between \$100,000.00 and \$500,000.00 for compensatory and punitive damages as well as interest, costs and attorneys' fees.

Respondent requested that the claims asserted by Claimant be dismissed in their entirety and that it be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and 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 and post hearing submissions, 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 panel of arbitrators orders the Respondent, Smith Barney, Inc. to amend the U-5 Form relating to Claimant's termination to change the reason for termination to: "Breach of company policy by failing to timely report or correct an error trade, followed by a request to shift the transaction to his personal account", if requested by the Claimant of the Respondent within 60 days of the date of this award;
3. Any relief not specifically granted is hereby denied in its entirety; and
4. The parties shall bear their own costs of arbitration including attorneys' fees except for those fees specifically enumerated herein.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

nine (9) sessions X \$750.00 = \$6,750.00 in total forum fees

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee in the amount of \$500.00 and the partial hearing session deposit in the amount of \$450.00. Claimant, Vladimir Ostromensky is hereby liable for and shall pay to the NASD the sum of \$4,612.50 as additional forum fees. Respondent, Smith Barney, Inc. is hereby liable for and shall pay to the NASD the sum of \$1,687.50 for forum fees. Respondent, Smith Barney is also liable for and shall

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pay to the NASD the member surcharge in the amount of \$350.00 in accordance with Section 45 of the Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

Name

Date

Charles Nesbitt, Esq.

March 25, 1996

Charles Nesbitt, Esq.

Public Arbitrator, Chairman

John R. Preston, Esq.

March 25, 1996

John R. Preston, Esq.

Public Arbitrator, Panelist

Thomas J. Cotrone, FA

March 25, 1996

Thomas J. Cotrone, FA

Industry Arbitrator

Date served by the NASD: April 1, 1996