

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Heinz Schairer

95-01673

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
Scott L. Kleiner

REPRESENTATION

Claimant Heinz Schairer ("Schairer") appeared pro se.

For Respondents Smith Barney, Inc. ("Smith Barney") and Scott Kleiner ("Kleiner"), Ann Parry, Esq. of Smith Barney, located in New York, New York.

CASE INFORMATION

Statement of Claim filed on July 27, 1995.

Claimant's Submission Agreement signed on April 3, 1995.

Joint Statement of Answer filed by Respondents on September 13, 1995.

Respondent Kleiner's Submission Agreement signed on September 19, 1995.

Respondent Smith Barney's Submission Agreement signed on March 5, 1996.

HEARING INFORMATION

Hearing Date/Sessions: July 18, 1996 - 2 Sessions

The hearings took place at the offices of the National Association of Securities Dealers, Inc., located in New York, New York.

CASE SUMMARY

Claimant alleged that he entered into a short sale on April 8, 1993 with an agreement with broker, Kleiner, to cover the short sale on the same day. Claimant contended that the verbal agreement was violated by Kleiner when he failed to cover the short sale as agreed upon and instructed.

Claimant alleged that he lost a total of \$12,435.24 which sum includes the \$500.00 arbitration filing fee. Claimant contended that Kleiner acted irresponsibly in failing to notify management immediately of his failure to adhere to the agreement. Claimant further alleged that Smith Barney is responsible for the conduct and integrity of its employees and should be held liable for Kleiner's dishonesty and irresponsibility.

Respondents maintained that Schairer is an experienced and sophisticated investor whose business relationship with Kleiner began in early 1987. Respondents further maintained that Claimant informed Kleiner from the outset that he desired to take both long and short positions in the equity market and did most of his trading on margin.

Respondents contended that on April 7, 1993, Kleiner recommended that Schairer consider shorting Lifetime Corporation ("LFT"). Respondents maintained that on April 8, before the market opened, Schairer authorized the short sale of 3000 shares of LFT and eventually received a price of 22 3/8. Respondents further maintained that Kleiner executed the trade according to Schairer's time and price discretion and that Schairer further instructed Kleiner to cover the position if his judgment so dictated.

Respondents contended that throughout the day, Kleiner and Schairer spoke several times. Respondents maintained that at 3:47 PM, Kleiner placed a limit order to buy back Schairer's LFT shares at 21 5/8. Respondents further maintained that Kleiner told Schairer if the limit order was executed, he would call him to let him know, otherwise he would call him on the following business day. Respondents contended that LFT did not hit the limit price so the purchase did not take place.

Respondents maintained that on April 12, 1993, Kleiner spoke to Schairer informing him that the price of LFT was moving against him and Schairer opted not to close his position. Respondents further maintained that Kleiner recommended that Claimant hold his position unless the losses reached a level exceeding 15%. Respondents contended that on April 15, 1993, Kleiner suggested that Schairer cover his short sale because LFT was going to open at a price beyond their original loss parameter of 15%. Respondents contended that this was the first time Schairer voiced any complaint about the transaction saying something like "Okay, but you are going to eat this. I want you to reverse the trade."

Respondents contended that Schairer's claim is an attempt to recover what are legitimate market losses. Respondents further contended that they consistently followed Schairer's instructions with respect to this transaction.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$12,435.24.

Respondents requested the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain 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. All claims against Smith Barney and Scott Kleiner are denied.
2. All parties are to bear their respective costs, including attorneys' fees; and

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

2 Sessions	x	\$400.00	=	\$800.00
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Claimant be and hereby liable for the sum of \$400.00 representing one-half of forum fees assessed. Claimant previously deposited \$400.00 with the NASD. Therefore, nothing is owed to the NASD by the Claimant.

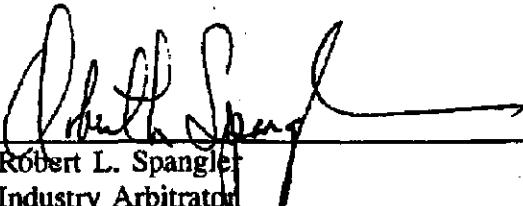
Respondents, Smith Barney and Scott Kleiner, be and hereby are jointly and severally liable for the sum of \$400.00 representing one-half of the total amount of forum fees assessed. Therefore, Respondents owe \$400.00 to the NASD.

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

ARBITRATORS' SIGNATURES

Robert D. Herschman, Esq.
Public Chairperson

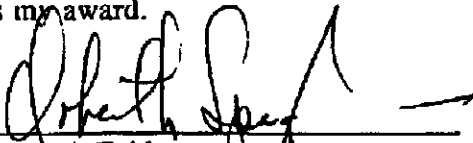
Kenneth Felder
Public Arbitrator



Robert L. Spangler
Industry Arbitrator

Date of Decision: August 13, 1996

I, **ROBERT L. SPANGLER**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.



Kenneth Felder
ROBERT L. SPANGLER

ARBITRATORS' SIGNATURES



Robert D. Herschman, Esq.
Public Arbitrator

Kenneth Felder
Public Arbitrator

Robert L. Spangler
Industry Arbitrator

Date of Decision: August 13, 1996

I, Robert D. Herschman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.



Robert D. Herschman, Esq.

ARBITRATORS' SIGNATURES

Robert D. Herschman, Esq.
Public Chairperson

Kenneth Felder
Kenneth Felder
Public Arbitrator

Robert L. Spangler
Industry Arbitrator

Date of Decision: August 13, 1996

I, KENNETH FELDER, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Kenneth Felder
Kenneth Felder