

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

Louis S. Brouillette
Claimant,

and

No. 95-01683

Jeffery Steven Stone & Smith Barney Inc.
(f/k/a Smith Barney Shearson Inc.)
Respondents.

REPRESENTATION OF PARTIES

Claimant, Louis S. Brouillette ("Brouillette"), was represented by Philip C. McGahey, Esq. and Mr. Paxton, Esq. of the Law Offices of Paxton, Beal & McGahey, located in Arlington, Texas.

Respondent, Smith Barney, Inc. (f/k/a Smith Barney Shearson Inc.), ("Smith Barney"), was represented by Ellen Slipp Associate General Counsel of Smith Barney Inc, located in New York, New York.

Jeffrey S. Stone ("Stone") was pro se.

CASE INFORMATION

Statement of Claim was filed on or about April 5, 1995.

Claimant's Submission Agreement was signed on or about March 29, 1995.

Statement of Answer was filed by Respondent Smith Barney on or about May 30, 1995. Respondent Smith Barney's Submission Agreement was signed on May 30, 1995 by Ellen Slipp, Associate General Counsel of Smith Barney.

The NASD does not have a record of Respondent Jeffery S. Stone's Submission Agreement or Answer.

HEARING INFORMATION

There was one telephonic pre-hearing Conference on April 2, 1998 before one (1) arbitrator. There was one day, two (2) sessions of full panel arbitration on June 23, 1998 in Dallas, Texas.

CASE SUMMARY

Claimant Brouillette alleged that Stone, while an employee of Smith Barney, placed Brouillette in unsuitable investments. Claimant Brouillette also alleged that there was excessive trading, and confusion occurring in his account. Claimant further asserted that Stone advised him to purchase stock in Builders Warehouse, which claimant did, purchasing 4,500 shares in the open market which he sold for a profit of \$6,300.00 six weeks later. Stone advised Claimant that he would have the opportunity to purchase 14,000 additional shares of the stock at a private offering at a discounted price (40 % off). Brouillette acted upon the opportunity and claims that he did not know that the transaction Stone was dealing in was private placement stock outside of Smith-Barney purchases, as all other Builders Warehouse purchases had been through the auspices of Smith-Barney. He further believed that Stone in selling the 14,000 shares was an authorized employee of Smith-Barney acting on its behalf. Brouillette alleged that he lost \$56, 000 in the value of the stock because it was reduced in value from the purchase price of \$4 per share to \$0 per share and because there is no market in the stock and the stock is restricted as to any sale.

Respondent Smith-Barney denied all of Claimant's claims in its Answer. Smith-Barney claimed that the initial purchase and sale of Builders Warehouse stock resulted in a profit for Claimant, and were the final transactions that appeared on Brouillette's Shearson statements. Respondent Smith Barney also alleged that the subscription agreement involving the private placement transaction was filled with warnings regarding the possible risks involved, and that particular transaction never appeared on Brouillette's Shearson statements. Respondents stated that the transaction was not handled by Shearson, and was outside the scope of Stone's authority and employment which was one of the factors that lead to his dismissal by Shearson. Respondent alleged that Claimant never contacted Shearson's branch manager about any of the transactions and that any excessive trading within his account was specified by Claimant. Brouillette, Respondent Smith Barney asserted, ratified by his silence any erroneous transactions within his account. Respondent Smith Barney also asserted six affirmative defenses.

The NASD does not have a record of Respondent Jeffery S. Stone's Answer.

RELIEF REQUESTED

Claimants, Brouillette, requested that the arbitration committee find for him and make such award as would fully and completely compensate him for his loss including \$56,000.00 in the value of the 14,000 shares of private placement stock he purchased.

Respondents, Smith Barney, requested that the claims asserted against it be dismissed in their entirety and that it be awarded costs and attorney fees.

The NASD does not have a record of Respondent Jeffery S. Stone's relief request.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimants, Louis S. Brouillette, the undersigned Arbitrators have determined that Respondents, Smith Barney and Jeffrey S. Stone, have been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.") The undersigned Arbitrators have also determined that Respondents, Smith Barney and Jeffrey S. Stone, did receive due notice of the hearing as required under Rule 10318 of the Code.

Respondent, Jeffrey S. Stone, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure and is bound by the determination of the arbitration panel on all issues submitted.

The parties present at the hearing 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 Regulation, Inc. Office of Dispute Resolution.

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. That the Respondents Smith Barney Inc. and Jeffrey S. Stone are jointly and severally liable for and shall pay to Claimant Louis S. Brouillette the amount of \$56,000.00 in compensatory damages and the amount of \$5,040.00 in interest; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conferences and there were two (2) hearing sessions for a total of \$1,300.00 in forum fees. Pursuant to Rule 10332(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 Rule 10332(c) of the Code, Claimant has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$150.00 and has also paid the hearing session deposit of \$500.00. Respondents, Smith Barney, Inc. and Jeffrey S. Stone are jointly and severally liable for the outstanding forum fees in this matter and shall pay the sum of \$800.00 to NASD Regulation, Inc., Office of Dispute Resolution.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent, Smith Barney has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$300.00 member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures:

/s/ Charles P. Aberg

June 26, 1998

Charles P. Aberg
Chairperson
Public Arbitrator

Date

/s/ Delores Martin

July 24, 1998

Delores Martin
Panelist
Public Arbitrator

Date

/s/ Arvel McCulloch

July 25, 1998

Arvel G. McCulloch
Panelist
Industry Arbitrator

Date