

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant:

Richard Carino

95-01869

Names of Respondents

Smith Barney Shearson, Inc.

Robert J. Escobio

Claudio Salazar

Kenneth A. Sussman

REPRESENTATION

For Claimant, Richard Carino ("Carino"): Robert A. Ware, Esq. of English, McCaughan & O'Bryan, P.A., Fort Lauderdale, Florida.

For Respondents, Smith Barney Shearson, Inc. ("Smith Barney"), Robert Juan Escobio ("Escobio"), Claudio Salazar ("Salazar") and Kenneth sussman ("Sussman"): William A. Hohausser, Esq. of Smith Barney, New York, New York.

CASE INFORMATION

Statement of Claim filed: 4/7/95.

Claimant's Submission Agreement signed on: 4/5/95.

A Joint Statement of Answer filed by all Respondents on: 6/26/96.

Submission Agreements signed by Respondent, Smith Barney on: 6/26/96 (by William A. Hohausser on behalf of the firm).

Submission Agreements signed by Respondents, Escobio and Salazar on: 8/30/96.

Submission Agreement signed by Respondent, Sussman on: 9/4/96.

HEARING INFORMATION

Hearing Dates/Sessions: 4-1-96/three (3) sessions.
4-2-96/three (3) sessions.
4-3-96/two (2) sessions.
7-24-96/two (2) sessions.
7-25-96/two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that he established an account with Respondent, Smith Barney on May 17, 1993; that his investment objective was "income"; that the account executives handling his account as of March 1, 1994, were Escobio and Salazar; that Respondent, Sussman, was the branch manager during the time in question; that the Claim was based on unsuitability of investments, breach of fiduciary duty, failure to supervise and negligence on the part of the two account executives, the branch manager and Smith Barney. Claimant further alleged that the reckless and speculative trading in options and puts and calls by the Respondents, Escobio and Salazar, and their advice on selection of type of investments resulted in Claimant's portfolio consisting entirely of stocks, with no blend of bonds or cash; that Respondents never advised Claimant or explained to him Smith Barney's recommended blend during 1994 of stocks 50%, bonds 35% and cash 15%; that the account executives advised Claimant to invest in naked puts and caused him to have 70% of his entire investment in one foreign company - Telefonos de Mexico - and only 30% in domestic stock; that through their strategy, Respondents allowed Claimant, by November 27, 1994, to have Telefonos de Mexico's exposure by 278% of his total equity in his account and failed to advise him of the danger of that situation; that testimony of Smith Barney's own expert established that Claimant's loss from investment activities amounted to \$222,647.42; that during the time period from March 1, 1994, to December 8, 1994, Smith Barney's manager, Sussman, failed to properly supervise the two account executives and did not contact Claimant but one time by letter on December 8, 1994, by which time Claimant's loss was already \$200,000.00; that the letter failed to advise Claimant of the danger of his situation and failed to offer any counseling about his investments, thus allowing the loss of an additional \$22,000.00.

Respondents maintained that Claimant consistently presented himself as a professional in the securities industry and that his only need was for his brokers to exercise his instructions accurately and expeditiously; that this was reflected by the stocks purchased by Claimant, many of which were unknown to Escobio or Salazar as well as the very steep commission discounts he demanded, which were equivalent to those paid by institutions; that, as regarding advise, Claimant represented on numerous occasions that he had no need of investment advice insofar as he owned or leased a quote machine and had access to numerous other financial advisors. Respondents further stated that Claimant had represented to government agencies on at least three occasions, under penalty of perjury, that he was a professional stockbroker; that Claimant had numerous other brokerage accounts, before, during and after the account at issue, and that

each was dominated by speculative, short-term trading to the exclusion of any other activity; that Claimant initiated each transaction in the account, for which each order ticket and confirmation reflects an "unsolicited" order, and that Claimant again is committing perjury.

RELIEF REQUESTED

Claimant requested damages for loss in value of his portfolio and a return of the interest that he was forced to pay on his margin account for a total out-of pocket loss of approximately \$310,000.00 plus prejudgment interest from February 1, 1995 until the date this amount is paid plus an amount of punitive damages of at least twice the amount of the above compensatory damages.

Respondents requested that the case be dismissed with prejudice, that Claimant pay all costs, including attorney's fees and further that this matter be expunged from the records of the individual Respondents.

OTHER ISSUES CONSIDERED & DECIDED

1. 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.
2. The parties to this proceeding agreed to the appointment of a Panel consisting of two industry arbitrators.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Smith Barney, Escobio, Salazar and Sussman, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's Request for Punitive Damages is hereby denied.
3. Respondents' request that this matter be expunged from the records of the individual Respondents, is hereby denied.
4. All other claims are hereby denied.

OTHER COSTS

The parties shall each bear their own costs and expenses incurred in connection with this proceeding, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$12,000.00 (twelve (12) hearing sessions X \$1,000.00)

1. Claimant is hereby assessed Forum Fees in the amount of \$6,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due, by Claimant, to the NASD of \$5,000.00.
2. Respondents, Smith Barney, Escobio, Salazar, and Sussman, are hereby jointly and severally assessed Forum Fees in the amount of \$6,000.00.
3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.
4. Respondent, Smith Barney, shall pay to the NASD the non-refundable member surcharge of \$500.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John Darling

Industry/Chairman

/s/

John R. Camp, Jr.

Public/Panelist

/s/

Douglas Delanoy, Jr.

Industry/Panelist

Date of Decision: September 5, 1996