

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

**In the Matter of the Arbitration Between**

**Name of Claimant**

Robert Farmer

95-02013

**Name of Respondents**

Smith Barney Shearson, Inc.  
Philip R. Consolo, Jr.

---

**REPRESENTATION**

For Claimant, Robert Farmer ("Farmer"): Michael A. Hanzman and Michael E. Criden of Hanzman Criden Korge Hertzberg & Chaykin, Miami, Florida.

For Respondents, Smith Barney Shearson, Inc. ("SBSI") and Philip R. Consolo ("Consolo"): David S. Friedman, Esq., Smith Barney Inc., New York, New York; Richard M. Bales, Jr., Esq., Carlson & Bales, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed: April 21, 1995.

Claimant's Submission Agreement signed on: April 17, 1995.

A Joint Statement of Answer was filed by Respondents SBSI and Consolo on July 13, 1995.

Respondent, SBSI failed to sign a Submission Agreement as required by Section 25 of the Code of Arbitration Procedure. (see "Other Issues")

Respondent, Consolo failed to sign a Submission Agreement as required by Section 25 of the Code of Arbitration Procedure. (see "Other Issues")

### HEARING INFORMATION

On February 29, 1996 a Pre-Hearing Conference consisting of one (1) session was conducted in Fort Lauderdale, Florida.

On March 13, 14, 15, July 17, 18, 19, 31, August 1 and 2, 1996 in Fort Lauderdale, Florida, hearings lasting seventeen sessions (17) were conducted.

### CASE SUMMARY

Claimant alleged that Respondent Consolo, an Account Executive with Respondent SBSI, solicited him to purchase and maintain a substantial number of shares of stock in Cambridge Biotech Corp. Claimant, who at the time was a SBSI customer, alleged that Consolo solicited him to purchase the shares at a firm other than SBSI in order to circumvent certain restrictions that had been placed upon Consolo's trading activities at SBSI. Claimant alleged that at the time he was solicited to purchase shares in Cambridge, Respondent Consolo was systematically liquidating approximately 386,000 shares of Cambridge which he personally owned due to the fact that Consolo had lost confidence in the stock. Claimant also alleged that at or about the same period of time, various Consolo family members were also selling off their shares.

Claimant asserted that Consolo's underlying motivation for soliciting Cambridge stock to he and others in the spring and summer of 1993 was to maintain and/or stabilize the price per share of Cambridge stock so that Respondent Consolo, as well as his family members, could liquidate large blocks of Cambridge stock at the best possible price. Claimant alleged that at the time he was solicited to purchase Cambridge stock, he was not told that Consolo and/or his family members were selling, or planned to sell, their personal holding.

Respondents denied that there was any price manipulation, breach of fiduciary duty, negligent supervision, and fraud. With respect to all Claimant's fraud claims, Respondents denied that they had made any false representations of a material fact, let alone that Claimant had relied on any alleged misrepresentations or that his reliance was reasonable and justified. Regarding price manipulation, Respondents asserted that the market for Cambridge was so liquid that it was impossible for Consolo to have manipulated the market.

Finally, Respondents denied that they breached their fiduciary duties or that Smith Barney negligently supervised Consolo. Respondent SBSI also pleaded that it should have no liability under Respondent Superior because any alleged wrongdoing committed by Consolo was beyond the scope of Consolo's employment.

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$204,115.70 plus prejudgment interest, plus punitive damages, reasonable attorneys' fees, accountants' and expert fees, costs, and other disbursements as permitted by applicable law, and any other additional relief as the Panel may deem appropriate.

Respondents requested that all of Claimant's claims be dismissed in their entirety and that they be awarded all of their own attorneys fees and costs.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondent, SBSI failed to sign a Submission Agreement as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure, SBSI being an NASD member firm at the time the facts giving rise to the controversy occurred.

Respondent, Consolo failed to sign a Submission Agreement as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure, Consolo being a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred.

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 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 SBSI and Consolo are found liable, jointly and severally, and shall pay to the Claimant the amount of \$204,114.95 plus interest in the amount of \$48,001.67 for a total due to the Claimant of \$252,116.62.
2. Respondent, SBSI is also found liable and shall pay to the Claimant the further amount of \$500,000.00 for punitive damages. The panel awards such damage due to Respondent SBSI's vicarious liability for Respondent Consolo's conduct and its failure to supervise.
3. Respondent, Consolo is found liable and shall pay to the Claimant the further amount of \$250,000.00 for punitive damages. The panel awards such damage due to Consolo's wanton, reckless and egregious conduct and pursuant to Section 517, Florida Statutes.

4. Respondents SBSI and Consolo are found jointly and severally liable for Claimant's attorney fees in the sum of 33 1/3% of the gross recovery which includes all compensatory damages, prejudgment interest, and punitive damages. The panel awards attorney's fees as the parties submitted the issue in the pleadings and based on the Federal Arbitration Act.
5. Respondents' request for attorneys' fees is hereby denied.

#### **OTHER COSTS**

Respondents SBSI and Consolo are jointly and severally liable to Claimant for the amount of \$4,750.00 for costs. Except as otherwise provided herein, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed Forum Fees in the amount of \$10,500.00 (seventeen sessions x \$600.00 per session plus one pre-hearing conference x 300.00).

Respondents SBSI and Consolo are hereby assessed jointly and severally \$10,500.00, of which \$5,250.00 shall be paid directly to Claimant as a refund of the fees previously deposited by Claimant.

The NASD shall retain the \$5,250.00 previously deposited by Respondents and the \$5,250.00 previously deposited by the Claimant in full satisfaction of such Forum Fees.

The NASD shall retain the non-refundable filing fee of \$250.00 paid by Claimant.

Page Five  
Award 95-02013

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Diane M. Perry, Esq.

Public/Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
David P. Wardwell

Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Irene L. Lapidus, Esq.

Public

Date of Decision: September 12, 1996