

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia Graham

95-02752

RECEIVED

AUG 3 1995

Name of Respondents

Smith Barney Shearson, Inc.
Desmond Judge

FILED

REPRESENTATION

For Claimant, Patricia Graham ("Graham"): Steven A. Baker, Esq., of Allan & Shipp, P.A., St. Petersburg, Florida.

For Respondents, Smith Barney Shearson ("Smith Barney") and Desmond Judge ("Judge"): Victor Machcinski, Esq., Corporate Counsel for Smith Barney Shearson, New York, New York.

CASE INFORMATION

Statement of Claim filed: June 7, 1995.

Claimant's Submission Agreement signed on June 2, 1995.

Statement of Answer filed on August 4, 1995 by Respondents, Smith Barney and Judge.

Respondent, Smith Barney's, Submission Agreement signed on August 4, 1995 by Victor A. Machcinski on behalf of his firm.

Respondent, Judge's, Submission Agreement signed on July 25, 1995.

HEARING INFORMATION

On May 29, 30, and 31, 1996 in Tampa, Florida, hearings lasting 5 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, Smith Barney and Judge, knowingly and deceitfully misrepresented and concealed the true values of Claimant's limited partnership investments, constituting a breach of Respondents' fiduciary duty to Claimant. Furthermore, Claimant alleged that as a result of Respondents' fraudulent concealment of material facts and information, Claimant has suffered damages in the form of diminution in the value of her portfolio, loss of interest and dividend income, and she has been subjected to excessive commissions. More specifically, Claimant alleged the following violations in connection with the purchase of the limited partnerships: (1) Misrepresentation, (2) Fraudulent mismanagement of the account, (3) Unsuitability, (4) Intentional breach of fiduciary duty, (5) Negligence, and (6) Fraudulent concealment.

Respondents, Smith Barney and Judge, denied all allegations of wrongful conduct in their entirety, and further denied that they were liable to Claimant for any damages. Respondents further alleged that there was no impropriety in any investment advice rendered by Respondents to Claimant at any time.

Respondents asserted the following separately enumerated defenses:

- a. The Statement of Claim fails to state a claim upon which relief can be granted;
- b. Claimant fails to set forth the alleged fraudulent conduct with the specificity required by law.
- c. Claimant knowingly and willingly assumed the risk of the investment.
- d. Claimant's alleged damages were proximately caused by intervening or superseding causes over which the Respondents had no control.
- e. Claimant's claims, in whole or in part, are time-barred.

RELIEF REQUESTED

Claimant requested the following relief:

1. Damages resulting from gross losses \$181,006.99;
2. Interest and dividend losses \$149,770.00;
3. Excessive commissions \$48,700.00;
4. Punitive damages \$758,953.98;
5. Costs of this arbitration proceeding;
6. Reasonable attorney's fees; and
7. All other relief deemed appropriate.

Respondents requested that the Statement of Claim be dismissed and that they be awarded their fees and expenses, including attorneys' fees and forum fees.

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. Respondents, Smith Barney and Judge's Motion to Dismiss has been denied.

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. Respondent, Smith Barney, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Respondent, Judge, is found liable and shall pay to the Claimant the amount of \$13,000.00, plus interest in the amount of \$4,000.00
3. Respondent Judge is also found for attorney's fees and shall pay to Claimant the further amount of \$3,500.00.
4. Respondents' request for attorney's fees, costs and expenses has been denied.
5. Claimant's request for expert witness fees has been denied.

OTHER COSTS

Other than the Forum Fees detailed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,000.00 (5 sessions x \$1,000.00).

1. Claimant is hereby assessed \$ 1,666.66 for which the NASD shall retain the \$1,550.00 previously deposited in partial satisfaction thereof leaving a balance due from Claimant of \$116.66 payable to the National Association of Securities Dealers, Inc.

2. Respondent, Smith Barney, is hereby assessed \$1,666.66 payable to the National Association of Securities Dealers, Inc.
3. Respondent, Judge, is hereby assessed \$ 1,666.66 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.
5. Respondent Smith Barney is also liable for the member surcharge of \$500.00 which should have been paid pursuant to Section 45 of the Code when the NASD perfected service on Respondent Smith Barney.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

Steven Goerke, Esq.

Public

Alan B. Goldstein, Esq.

Public

Howard C. Carstens

Industry

Date of Decision: _____

RECEIVED
AUG 2 1996

ARBITRATION