

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Laura Harryman

95-03195

Name of Respondents

A.G. Edwards & Sons, Inc.  
Smith Barney Shearson, Inc.  
Joe Saporito  
Jeff Wang  
Doug Kentfield  
Kevin Kennedy  
Alan Borko

REPRESENTATION

For Claimant Laura Harryman ("claimant") appeared Charles J. Hecht, Esq. of Hecht & Steckman, New York, New York.

For Respondents A.G. Edwards & Sons, Inc. ("Edwards"), Kevin Kennedy ("Kennedy"), David Horowitz ("Horowitz") and Alan Borko ("Borko") appeared Phyllis A. Hartich, Esq., in-house counsel for A.G. Edwards & Sons, Inc., St. Louis, Missouri

For Respondents Smith Barney Shearson, Inc. ("Smith Barney"), Joe Saporito ("Saporito"), Jeff Wang ("Wang") and Doug Kentfield ("Kentfield") appeared Marcie S. Mintz, Esq., in-house counsel for Smith Barney Shearson, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: July 5, 1995

Amended Statement of Claim filed: July 12, 1995

Second Amended Statement of Claim filed: September 15, 1995.

Claimant's Submission Agreement signed on: June 28, 1995.

Statement of Answer filed by Respondents Smith Barney, Saporito, Wang and Kentfield on October 6, 1995.

Submission Agreements signed by Respondents Smith Barney, Saporito, Wang and Kentfield on October 6, 1995.

Statement of Answer filed by Respondents Edwards, Borko and Kennedy on October 27, 1996.

Submission Agreement signed by Respondent Edwards on October 27, 1996.

Submission Agreement signed by Respondent Borko on July 17, 1996.

Submission Agreement signed by Respondent Horowitz on July 31, 1995.

Submission Agreement signed by Respondent Kennedy on July 20, 1996.

#### HEARING INFORMATION

Hearing Dates/Sessions:      September 10, 1996/Two Sessions  
   September 11, 1996/Two Sessions  
   December 4, 1996/Two Sessions  
   December 5, 1996/One Session  
   December 6, 1996/Two Sessions  
   January 30, 1997/Two Sessions  
   January 31, 1997/Two Sessions  
   April 14, 1997/Two Sessions  
   April 15, 1997/Two Sessions  
   April 23, 1997/Two Sessions

The hearings were held at the offices of NASD Regulation, Inc., New York, New York.

#### CASE SUMMARY

Claimant alleged that she became associated with Smith Barney as a registered representative at its Huntington branch office in 1991 and thereafter transferred to the Jericho, New York office where she remained until she left the firm in June 1994 to join Edwards. Claimant asserted that, in June 1993, upon Smith Barney's advice, she obtained a health insurance policy from a carrier for a customer, Applied Genetics. Claimant alleged that she received commission checks directly from the insurance company beginning in September 1993 totaling \$1806. Claimant also alleged that she advised Smith Barney of the issuance of the policy and the receipt of commission checks. Claimant further alleged that the insurance policy was written through the Economic Planning Group since she had been advised that Smith Barney was not licensed to write this type of policy.

Claimant stated that she left Smith Barney on or about June 20, 1994 and joined Edwards. Claimant alleged that Applied Genetics directed Smith Barney to transfer its account to claimant at Edwards. Claimant also alleged that, on June 27, 1994, Smith Barney called Respondent Kennedy at Edwards and advised him that claimant had violated company policy by selling an insurance policy outside the firm and further advised Kennedy that Smith Barney would be filing a negative Form U-5. Claimant asserted that Edwards terminated her employment on June 27, 1994 because Edwards had been advised that claimant had sold an insurance policy outside the firm and received commissions directly from the insurance company in violation of Smith Barney's policy. Claimant alleged that she left Smith Barney because the firm cut back the services offered by its financial and retirement planning division and claimant stated that a full service financial planning division was critical for many of her conservative clients. Claimant also stated that Kenfield wanted claimant to change her method of doing business so she would have more rapid turnover and generate greater commissions.

Claimant alleged that, after leaving Smith Barney, the firm and its agents and employees under the direction of Kentfield, engaged in a campaign of unlawful and improper conduct to discredit claimant. Claimant asserted that Smith Barney and its agents and employees improperly prepared several Form U-5s and falsely reported on claimant's Form U-5 that her employment with Smith Barney was terminated with cause. Claimant also alleged that Smith Barney and its agents and employees libeled and slandered claimant, falsely represented that her termination was under review for fraud or wrongful taking of property or for violating investment related statutes, regulations or industry standards of conduct, falsely stated that Smith Barney received a complaint concerning the benefits of an insurance policy sold by claimant, falsely stated that the insurance written by claimant was unauthorized and sold during July 1993 outside the firm and falsely stated that claimant received commissions directly from the insurance company in violation of firm policy when claimant had never been advised that such firm policy existed and when claimant had advised Smith Barney of all of her activities. Claimant asserted that these false Form U-5s were in retaliation for the fact that Applied Genetics had directed Smith Barney to transfer its account to claimant at Edwards. Claimant alleged that these statements formed the basis for her subsequent dismissal from Edwards and effectively barred her from being associated with a major securities firm.

Claimant further stated that Saporito, Wang and Kentfield, as Smith Barney's employees, falsely stated to claimant's clients that claimant had been fired, was unethical, had personal problems and falsely gave claimant's clients the impression that claimant had engaged in improper activities with respect to insurance. Claimant asserted that these false and defamatory statements represented an attempt by respondents to obtain control over claimant's customer accounts. Claimant alleged that, at the time she resigned from Smith Barney, her book of business was approximately \$4.5 million. Claimant alleged that Respondent Smith Barney and its employees were unjustly enriched and exploited a portion of her book of business for their own benefit when it should have been transferred to claimant at Edwards, her new firm.

Claimant also asserted that, without any investigation, Edwards, acting on a telephone call from Kentfield, summarily terminated claimant's employment. Claimant alleged that Borko, Kennedy, Horowitz and Barbara Evans ("Evans"), as employees of Edwards, falsely and maliciously stated to claimant's clients that claimant was no longer in the brokerage business. Claimant also alleged that Borko, Kennedy, Horowitz and Evans advised claimant's clients that she was no longer with Edwards and conveyed the false impression to her clients that claimant wanted her accounts to remain with Edwards.

Claimant asserted that Respondent Edwards and its employees had been unjustly enriched and exploited for their own benefit, a portion of her book of business originally valued at \$4.5 million which should have remained with claimant when she left Edwards. Claimant alleged that only \$800,000 remained of her book of business by the time she found new employment. Claimant alleged that she has suffered and continues to suffer damage by reason of lost commissions and has incurred economic injury in the form of costs incurred in rebuilding her client and asset base.

Respondents Smith Barney, Wang, Saporito and Kentfield denied that any information contained in the claimant's Form U-5 was false. Respondents maintained that claimant's performance was unsatisfactory and that a memorandum dated May 6, 1994 confirmed this. Respondents maintained that the memorandum was written to confirm a meeting held on May 3, 1994, during which claimant was advised of the firm's expectations and goals. Respondents also maintained that claimant resigned from Smith Barney on June 17, 1994 and gave no indication that she was leaving to join Edwards. Respondents

alleged that several days after claimant's departure, Respondent Kentfield received a telephone call from Edwards' Compliance Department requesting clearance to transfer claimant's license. Respondents contended that such clearance was provided.

Respondents maintained that, on June 23, 1994, Kentfield received a telephone call from the Director of Operations for Applied Genetics who complained about the benefits coverage under the health care policy. Respondents maintained that, prior to this call, they were unaware of the existence of an account for Applied Genetics and of a relationship between the company and claimant. Respondents maintained that they searched for claimant's file with regard to Applied Genetics and that, when no information could be found, contacted Respondent Kennedy at Edwards to request that he ask claimant where the files could be located. Respondents contended that Kennedy subsequently advised Kentfield that claimant told him that she had sold the policy directly to Applied Genetics outside Smith Barney. Respondents maintained that, on June 27, 1994, Kentfield learned that claimant was paid a commission of \$2,000 for the sale of the policy plus approximately \$200 per month by the Economic Planning Group with which Smith Barney had no affiliation. Respondents further maintained that Applied Genetics advised Kentfield that it had agreed to purchase the policy from claimant because she had represented that she was selling it through Smith Barney. Respondents contended that Kentfield subsequently discussed with Kennedy what he had learned and requested that Kennedy research with claimant what had happened. Respondents Smith Barney, Wang, Saporito and Kentfield denied that they engaged in a campaign to slander and libel claimant and maintained that the Form U-5s filed by Smith Barney were truthful and accurate.

Respondents Edwards, Horowitz, Bork and Kennedy denied that claimant was summarily terminated. Respondents maintained that Edwards first learned of the sale of the policy upon receipt of a letter from Jon Klein ("Klein") of Applied Genetics sent to claimant on June 22, 1994. Respondents stated that they were concerned by the portion of the letter that inquired whether claimant was acting as an independent broker rather than as an agent of Smith Barney. Respondents further maintained that claimant was asked for an explanation of the circumstances of the sale. Respondents admitted that information supplied by Smith Barney provided, in part, the basis on which claimant's employment with Edwards was terminated on June 28, 1994 because the information provided caused legitimate compliance concerns. Respondents also contended that among the information considered by Edwards in deciding to terminate claimant were statements made by Smith Barney that the policy had been sold in violation of industry and firm rules and regulations.

Respondents further denied that they made false, defamatory or malicious statements or comments about claimant to claimant's clients. Edwards also denied that it had attempted to secure accounts from claimant. Edwards also contended that the information contained in the claimant's Form U-5 prepared by it was truthful and accurate. Respondents maintained that no damages claimant allegedly suffered had any causal connection to Edwards.

#### RELIEF REQUESTED

Claimant requested damages in an amount not less than \$500,000 as compensation for severe emotional distress; damages in an amount to be determined by the panel for defamation and slander and an Order by the panel directing that the false Form U-5s be expunged from the records and that Respondents Smith Barney and Edwards issue corrected Form U-5s.

Respondents Smith Barney, Kentfield, Saporito and Wang requested dismissal of the Statement of Claim in its entirety together with costs and attorney's fees.

Respondents Edwards, Horowitz, Kennedy and Borko requested dismissal of the Statement of Claim in its entirety and requested that Edwards be awarded any and all costs and expenses incurred in connection with the arbitration including reasonable attorney's fees.

#### 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 NASD Regulation, Inc.

Barbara Evans was originally named as a respondent by claimant in this proceeding. Barbara Evans was not a registered representative for Respondent Edwards and was served on a voluntary basis. Barbara Evans did not submit to the jurisdiction of NASD Regulation, Inc. and did not participate as a party in the arbitration proceeding.

#### 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. The Statement of Claim is denied in its entirety.
2. All other relief requests are denied.
3. Each party is to bear their own costs and fees.

#### FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation will retain the \$500 non-refundable filing fee submitted by claimant and have assessed the following Forum Fees:

$19 \text{ sessions} \times \$750 = \$14,250$  - claimant's hearing session deposit = \$13,500 outstanding.

Claimant be and hereby is liable for the sum of \$7,125.00 representing one half of the forum fees assessed. Claimant has already deposited \$750 with NASD Regulation, Inc. Claimant owes \$6375.00.

Respondent Smith Barney be and hereby is liable for the sum of \$7,125.00 representing one half of the forum fees assessed. Respondent owes NASD Regulation, Inc. the sum of \$7,125.00

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Joseph J. Arata, Esq.

I, Joseph J. Arata, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, That I am the individual described herein, and who have executed this instrument which is my award.

  
Joseph J. Arata, Esq.

Date of Decision: June 2, 1997

Fees are payable to NASD Regulation, Inc.

9706246

*Diana L. Friedman*  
Diana L. Friedman, ~~Esq.~~

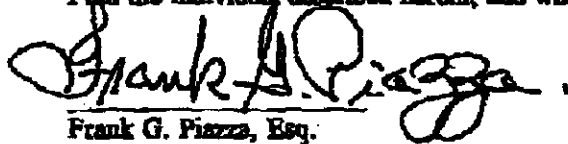
I, Diana L. Friedman, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

*Diana L. Friedman*  
Diana L. Friedman, ~~Esq.~~

Date of Decision: June 2, 1997

  
Frank G. Piazza, Esq.

I, Frank G. Piazza, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, That I am the individual described herein, and who have executed this instrument which is my award.

  
Frank G. Piazza, Esq.

Date of Decision: June 2, 1997