

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Leon and Dora Linder

95-03715

Name of Respondents

Smith Barney Shearson, Inc.
Stanley Leifer
Irwin Kabat

REPRESENTATION

For Claimants Leon and Dora Linder ("Claimants") appeared Gary J. Greenberg, Esq. located in New York, New York.

For Respondents Smith Barney Shearson, Inc. ("Smith Barney") Stanley Leifer ("Leifer") and Irwin Kabat ("Kabat") (collectively the "Respondents") appeared John P. Bevilacqua Esq. in-house counsel located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on August 24, 1995. An Amended Statement of Claim was filed on January 12, 1996. Claimants' Submission Agreement was signed on January 12, 1996.

A Joint Statement of Answer was filed by Respondents on October 11, 1995 and the Amended Answer was filed on April 8, 1996. Respondent Smith Barney's Submission Agreement was signed on September 5, 1995. Respondent Leifer's Submission Agreement was signed on October 2, 1995. Respondent Kabat's Submission Agreement was signed on April 10, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	August 14, 1996	-	One Session
Hearing dates/sessions:	April 9, 1997	-	Two Sessions
	April 10, 1997	-	One Session

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

CASE SUMMARY

Claimants stated that they were customers of Smith Barney and that Leifer, a registered representative of Smith Barney, was their financial consultant. Claimants alleged that, on December 21, 1994, Leon

Linder told Leifer that he wished to purchase 2,000 shares of General Magic stock in the initial public offering ("IPO") and Leifer first professed ignorance about the IPO and then said his request was premature. Claimants also alleged that, between December 21, 1994 and February 10, 1995, Leon repeatedly telephoned and personally visited Smith Barney and Leifer to ask Leifer to sell him stock in the General Magic IPO. Claimants asserted that Leifer told Leon that he could not sell him the shares because of personal differences he had with Kabat, the branch office manager, and because Claimants did not do enough business with Smith Barney. According to Claimants that, on February 9, 1995, Smith Barney allocated 50 shares of General Magic to the Claimants at \$14.00 per share and, on February 10, 1995, the stock went on the open market and Claimants sold their shares at \$31.25. Claimants contended that Smith Barney violated Article III Section 1 of the NASD Rules of Fair Practice and did not sell the shares of General Magic on a "first come-first served" basis or on a pro-rata basis in the event that demand exceeded supply. Claimants further contended that Respondents refusal to allow them full participation in the IPO was arbitrary and capricious.

Respondent maintained that General Magic's IPO was for a high technology stock that was much anticipated and well publicized. Respondent further maintained that when Claimants allegedly tendered an offer to purchase 2,000 shares of General Magic in December 1994, the offering price had not been established, the Securities and Exchange Commission had not approved the offering and a prospectus had not been completed. Respondent also maintained that Mr. Leifer's branch was allocated only 2,300 shares and there were indications of interest to purchase approximately 60,000 shares. Respondent contended that, in light of the huge demand, Claimants allocation of 50 shares of General Magic was fair and Claimants received a \$862.50 one day profit on an investment of \$700.00. Respondent also contended, as affirmative defenses, that Claimants have failed to state a claim upon which relief can be granted, respondents are not in violation of any applicable rules or regulations, they are barred by the doctrines of ratification, waiver, estoppel and laches, Claimants failed to mitigate their damages, Claimants losses were the result of their own actions and Claimants are not entitled to punitive damages or attorneys' fees.

RELIEF REQUESTED

Claimants requested \$33,637.50 in actual damages, interest, attorney fees and costs and punitive damages of \$15,000.00.

Respondent requested that Claimants' Statement of Claim be dismissed in its entirety. At the hearing Respondents Kabat and Leifer requested that this matter be expunged from their records maintained by the Central Registration Depository.

OTHER ISSUES CONSIDERED AND 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 the NASD.

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. Claimant's claims are dismissed in their entirety.
2. The records maintained by the Central Registration Depository for Stanley Leifer and Irwin Kabat shall be expunged of any reference of this arbitration.
3. All requests for attorneys' fees are denied.
4. All requests for punitive damages are denied.
5. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by the Claimants and have assessed the following forum fees:

1 Pre-Hearing Session x \$300	= \$300.00
3 Hearing Sessions x \$400	= \$1,200.00
Total Forum fees	= \$1,500.00

The arbitrators have determined that Claimants shall bear one-half the cost of arbitration and Respondents Smith Barney, Kabat and Leifer shall jointly and severally bear one-half the cost of arbitration. Claimants, Leon and Dora Linder, be and hereby are jointly and severally liable and shall pay to NASD Regulation Inc. the sum of \$750.00 representing one-half of the total forum fees assessed, less the \$400.00 hearing session deposit previously remitted, net \$350.00 due.

Respondents, Smith Barney Shearson, Inc., Stanley Leifer and Irwin Kabat be and hereby are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$750.00 representing one-half the total forum fees.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

Krishna M. Vempaty
Krishna M. Vempaty, Esq.

Date of Decision 5/21/97

Philip Zimmerman, CPA

Julian Hess

I, Krishna M. Vempaty, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Krishna M. Vempaty
Krishna M. Vempaty, Esq.

I, Philip Zimmerman, CPA, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

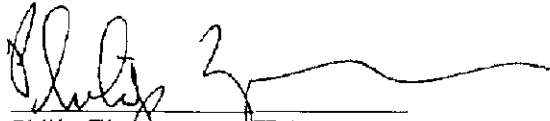
Philip Zimmerman, CPA

I, Julian Hess, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Julian Hess

ARBITRATORS' SIGNATURES

Krishna M. Vempaty, Esq.



Philip Zimmerman, CPA


Date of Decision 5/21/97

Julian Hess

I, Krishna M. Vempaty, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Krishna M. Vempaty, Esq.

I, Philip Zimmerman, CPA, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Philip Zimmerman, CPA

I, Julian Hess, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Julian Hess

ARBITRATORS' SIGNATURES

Krishna M. Vempaty, Esq.

Philip Zimmerman, CPA

Julian Hess
Julian Hess

Date of Decision 5/21/97

I, Krishna M. Vempaty, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Krishna M. Vempaty, Esq.

I, Philip Zimmerman, CPA, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Philip Zimmerman, CPA

I, Julian Hess, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Julian Hess
Julian Hess