

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between
Louis Pat Tiers, Jr., Trustee; and
L. P. Tiers Family Trust,
Claimant,

v.

No. 95-04711

Smith Barney, Inc., and
Shawn Welch,
Respondents.

REPRESENTATION OF PARTIES

Louis Pat Tiers, Jr., Trustee; and L.P. Tiers Family Trust ("Claimant") was represented by Robert D. Mitchell, Esq., Scottsdale, Arizona.

D. Mitchell, Esq., Scottsdale

Smith Barney, Inc. ("SBI") and Shawn Welch ("Welch") (or collectively referred to as "Respondents") were represented by Sean J. Coughlin, Esq., of Smith Barney, Inc., New York, New York.

New York, New York

CASE INFORMATION

Claimant's Statement of Claim was filed on or about September 29, 1995. Claimant's Submission Agreement was signed on September 29, 1995.

Respondents' Statement of Answer was filed on or about December 7, 1995. Respondents' Submission Agreements were signed on

HEARING INFORMATION

The hearing was held on March 7, 1996 in Phoenix, Arizona for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that: Respondents were negligent through their advice to claimant to invest in the Spectravision Inc. (f/k/a SPI Holdings, Inc.) Senior Subordinated Reset Notes (the "Notes") purchased in his portfolio, and through the various undisclosed material information, including the "PIK" feature of the notes, not disclosed to Claimant; the securities sold by the respondents to

claimant were not suitable for his needs and circumstances; Respondents breached their fiduciary duty; Respondents breached their contract in that they failed to conduct their business in a manner consistent with well-recognized securities industry standards, and through their failure to perform competently in handling Claimant's account; Respondents' conduct as alleged violated Arizona Securities laws, §44-1991, et seq.; the prospectus, if any, for the subject investment do not negate Respondents' liability for their securities fraud violations; Respondents' conduct violated federal securities fraud, §10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and SEC Rule 10b-5 [17 C.F.R. §240.10b-5]; Respondents committed common law fraud; Respondents made intentional misrepresentations; and Respondents made negligent misrepresentations; SBI failed to supervise Welch's activities.

Unless otherwise admitted therein, Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: Claimant's demand for damages is improper as a matter of law and fact, and therefore, the Statement of claim fails to state a claim upon which relief can be granted; Respondents did not make any misrepresentations, omissions or misstatements with respect to the investments made in Claimant's account; to the extent that any losses or diminution in the value of the accounts occurred, the losses were within the risk that the Claimant assumed; to the extent that Claimant's account diminished in value, such diminution is the result, in whole or in part, of unforeseen market fluctuations; the damages allegedly suffered by Claimant were not proximately caused by any act attributable to SBI, instead, such damages were caused by intervening or superseding causes over which SBI had no control; the damages alleged to have been sustained by Claimant were caused, in whole or in part, by Claimant's failure to mitigate his damages; claimant has failed to state a claim for punitive damages; claimant's allegations relating to punitive damages are merely conclusive and failed to set forth ultimate facts sufficient to even state a claim for the recovery of punitive damages; and Claimant has no right to recover attorneys' fees.

RELIEF REQUESTED

Claimant requested an award of the following: Recision or compensatory damages of at least \$30,600, plus interest, in a specific amount to be provided at the arbitration hearing; recovery of filing fees and such other costs and expenses as may be incurred in bringing this arbitration; attorneys' fees pursuant to A.R.S. §§12-341.01 and 44-2001; punitive damages in an amount the arbitrators deem appropriate; and such other relief in favor of Claimant as the arbitrators deemed just and appropriate under the circumstances.

Respondents requested that the Statement of Claim asserted against them be dismissed in its entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

Claimant's claims asserted against Shawn Welch are, and each of them, denied with prejudice.

Smith Barney, Inc. shall rescind the Spectravision transaction and shall pay to Claimant the sum of \$30,600. Upon receipt of the funds, Claimant shall tender the Spectravision notes to Smith Barney, Inc.

Smith Barney, Inc. is liable for, and shall pay to the Claimant the sum of \$3,782 as an award of interest less the payout on the Spectravision notes of \$1,858, and shall pay to the Claimant the sum of \$8,029 as an award of costs and fees.

All other claims not specifically set forth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Smith Barney, Inc..

Additional forum fees in the amount of \$400 are assessed against Smith Barney, Inc..

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

Dated:

Warren C. Kotzman
Warren C. Kotzmann
Public Arbitrator, Presiding Chair

s/s

March 7, 1996

Daniel J. Danvir
Daniel J. Danvir
Public Arbitrator

s/s

March 7, 1996

Leon G. Mackey
Leon G. Mackey
Industry Arbitrator

s/s

March 7, 1996