

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Slater Financial Corp.
Howard Slater

95-05701

Name of Respondent(s)

Smith Barney, Inc. f/k/a
Smith Barney Shearson, Inc.
Gwen C. Smith

REPRESENTATION

For Claimants, Howard Slater ("Slater") and Slater Financial Corporation ("SFC"): Charles P. Randall, Esq., Boca Raton, Florida.

For Respondents, Smith Barney, Inc. f/k/a Smith Barney Shearson, Inc. ("Smith Barney") and Gwen Smith ("Smith"): William A. Hohauser, Esq., of Smith Barney Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: December 4, 1995. Claimants' Submission Agreement signed on: December 1, 1995 by Howard Slater individually and on behalf of SFC.

Joint Statement of Answer filed by Respondents on: February 7, 1996. Respondent Smith Barney's Submission Agreement signed on: February 5, 1996 by William Hohauser on behalf of Smith Barney. Respondent Smith's Submission Agreement signed on: February 10, 1997.

HEARING INFORMATION

On October 4, 1996 a telephonic pre-hearing conference was conducted with the full panel. On February 5, 1997 a telephonic pre-hearing conference was conducted with a single arbitrator.

On February 10, 11 and 12, 1997 in Ft. Lauderdale, Florida, hearings lasting six sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents Smith Barney and Smith were liable for tortious interference with Claimants' business relationships. Claimants maintained that Smith had intentionally or negligently induced Slater's client, Edyth Newman ("Newman"), to initiate a lawsuit against him alleging that Slater churned Newman's account. Claimants next maintained that Smith recommended the attorney which Newman used and actively assisted the attorney during the ensuing litigation against Slater. Claimant next maintained that as a direct result of the evaluation provided by Smith, Newman proceeded to slander Slater causing a drastic reduction in sales which eventually required him to move his business to another location. Claimants next maintained that Smith compiled the information contained in Smith's summaries by erroneously assuming that Slater had made all of the investments for Newman when in fact he had not. Claimants next maintained that Newman thereafter transferred her accounts to Smith Barney which resulted in substantial surrender charges to Newman who then proceeded to sue Slater for those losses. Claimants further alleged that Smith Barney failed to properly supervise Smith and failed to prevent the unjustified and unnecessary losses to Newman in relation to the surrender charges.

Respondents denied all allegations of wrongdoing and alleged that they merely provided a transaction summary when asked to do so by the Newman family. Respondents maintained that they did not instigate any lawsuit; they did not provide advice to the Newman family during the pendency of Newman's lawsuit against Slater; that Smith did not serve as an expert witness for Newman and did not make any disparaging statements about Slater to any persons. Respondents next maintained that the transaction summary did not contain any recommendations or evaluations of the investments made and Respondents merely responded to questions posed to them by the Newman family and took no other actions.

Respondents further alleged that the suitability of several of the investments recommended by Slater were open to debate and did not further Newman's investment goals. Respondents next maintained that Slater offered no proof of damages and that no one from the Newman family made any untrue or disparaging statements regarding Claimants and that the damages requested by Claimants in this action were speculative. Respondents further alleged that Slater deliberately relocated his office in an effort to develop his business in a new territory and because his agency relationship with an insurance company had terminated, and not by reason of any wrongdoing on Respondents' part. Respondents maintained that Slater's commission revenues increased dramatically during this time period and, therefore, Slater has not sustained any compensable harm.

RELIEF REQUESTED

Claimants requested damages in the amount of \$255,000.00 plus punitive damages.

Respondents requested dismissal of the claim plus costs and 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 original(s) 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. Respondents Smith Barney and Smith are found liable, jointly and severally, and shall pay to Claimants the amount of \$81,500.00.
2. Claimants' request for punitive damages is denied.
3. Respondents' requests for costs and attorney's fees are denied.
4. Respondents Smith Barney and Smith are also found liable and shall pay to Claimants the further amount of \$750.00 as a reimbursement of the hearing session deposit previously paid by Claimants.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$5,550.00 (six sessions x \$750.00 per session plus \$750.00 for the pre-hearing conference on October 4, 1996 with the full panel plus \$300.00 for the pre-hearing conference on February 5, 1997 with a single arbitrator).

1. Respondents Smith Barney and Smith are hereby assessed \$5,550.00, jointly and severally, for which the NASD shall retain the \$750.00 previously deposited by Claimants in partial satisfaction thereof leaving a balance due to the NASD of \$4,800.00.
2. The NASD shall retain the \$750.00 hearing session deposit previously paid by Claimants to the NASD.
3. The NASD shall retain the \$500.00 non-refundable filing fee previously paid by Claimants to the NASD.

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4. The NASD shall retain the \$350.00 member surcharge previously paid by Claimant SFC to the NASD.

5. The NASD shall retain the \$350.00 member surcharge previously paid by Respondent Smith Barney to the NASD.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
John Darling

Industry/Chairman

_____/s/_____
Leslie Bishop

Industry

_____/s/_____
Ronald W. Cornew

Industry

Date of Decision: March 26, 1997

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Respondents further alleged that the suitability of several of the investments recommended by Slater were open to debate and did not further Newman's investment goals. Respondents next maintained that Slater offered no proof of damages and that no one from the Newman family made any untrue or disparaging statements regarding Claimants and that the damages requested by Claimants in this action were speculative. Respondents further alleged that Slater deliberately relocated his office in an effort to develop his business in a new territory and because his agency relationship with an insurance company had terminated, and not by reason of any wrongdoing on Respondents' part. Respondents maintained that Slater's commission revenues increased dramatically during this time period and, therefore, Slater has not sustained any compensable harm.

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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 original(s) 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. Respondents Smith Barney and Smith are found liable, jointly and severally, and shall pay to Claimants the amount of \$81,500.00.
2. Claimants' request for punitive damages is denied.
3. Respondents' requests for costs and attorney's fees are denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
Industry/Chairman

John Darling

_____/s/_____
Industry

Leslie Bishop

_____/s/_____
Industry

Ronald W. Cornew

Date of Decision: March 26, 1997

The following Arbitrator(s) concur(s) with the award:

none

The following Arbitrator(s) dissent(s) with the award:

none