

125

AWARD

NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

Christian V. Ekberg

Arbitration
No. 95-05886

Name of Respondent(s)

Smith Barney Inc.

REPRESENTATION

For Claimant: John R. Kiefner, Jr., Esq. and Clifford J. Hunt, Esq., Riden, Earle & Kiefner, P.A., St. Petersburg, Florida

For Respondent: Sean J. Coughlin, Esq. and Marcie S. Mintz, Esq., Smith Barney Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: December 12, 1995

Claimant's Reply to Respondent's Affirmative Defenses and Reply to Counterclaim filed: March 18, 1996

Claimant's Submission Agreement signed: December 8, 1995

Statement of Answer and Counterclaim filed by Respondent: February 13, 1996

Respondent's Submission Agreement signed: February 13, 1996

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): July 31, 1996 (two sessions)
August 1, 1996 (two sessions)
August 2, 1996 (two sessions)
January 21, 1997 (two sessions)
January 22, 1997 (one session)

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged that the above-captioned dispute sets forth an industry claim brought by a terminated registered securities sales representative/division (agency) manager, Christian V. Ekberg, against his former employer, Respondent Smith Barney Inc. (Smith Barney). Claimant further alleged that because of the malicious Forms U-5 prepared by Smith Barney, Claimant has suffered a plethora of damages, and Smith Barney's actions have effectively precluded Claimant from obtaining comparable employment elsewhere in the industry. Claimant further alleged that he suffered harm because of the false and misleading content of the subject Forms U-5. Claimant further alleged the following claims with respect to his employment with Smith Barney: 1) Defamation; 2) Tortious interference with advantageous business relationships, causing losses in earnings and benefits; 3) Violation of implied covenant of good faith and fair dealing; 4) Intentional infliction of emotional distress; 5) Defamation of credit; 6) Unlawful retaliation; 7) Exemplary damages; and 8) Equitable injunctive relief directing the filing of an amended Form U-5 and deletion of the original Forms U-5 and expunging those original Forms U-5.

Respondent Smith Barney denied each and every allegation of wrongful conduct ascribed to it and further denied that it is liable to Claimant for any monetary damages. Respondent alleged that Claimant's employment with Smith Barney was terminated as a result of certain verbal and written promises to a client that he had no right to make and which were false; that the erroneous written promises were sent on the Firm's letterhead, without Branch Manager's approval in direct violation of Firm policy; and that

Claimant's termination of employment was both appropriate and necessary. Respondent also asserted affirmative defenses.

In its Counterclaim, Respondent Smith Barney alleged that Mr. Ekberg has failed and refused to pay a reversed commission in connection with Mr. Ekberg's sale of a variable annuity to customer, Al Harriman.

Claimant Ekberg denied each and every affirmative defense set forth in Respondent's Answer and Counterclaim and denied any liability with respect to Respondent's Counterclaim.

RELIEF REQUESTED

Claimant requested the entry of an award against Respondent Smith Barney in the total amount of \$985,000.00, prejudgment interest at the prevailing statutory rate, reasonable attorneys fees, costs, and such other and further relief as the panel deems necessary and proper.

Respondent Smith Barney requested that Mr. Ekberg's Statement of Claim be dismissed together with costs and attorney's fees and that on its Counterclaim, Smith Barney be awarded \$5,624.69 plus interest, reasonable attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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. The panel found that the certain Form U-5 Uniform Termination Notice For Securities Industry Registration (Amended) dated 12/7/94 and the accompanying Disclosure Reporting Page, both of which were completed and filed by Respondent Smith Barney Inc. with respect to Claimant Christian V. Ekberg, contain significant statements of fact which Respondent Smith Barney Inc. knew were untrue and knew or should have known would be injurious to the professional reputation of Claimant Christian V. Ekberg. Respondent Smith Barney Inc. is ordered to take and complete, within 60 days after the date of this Award, all such actions as shall be necessary and effective to expunge said Form U-5 and Disclosure Reporting Page, in their entirety, from the Securities Industry Registration and promptly thereafter to provide Claimant Christian V. Ekberg with written confirmation that such expungement has been effected.

2. Respondent Smith Barney Inc. is liable for and shall pay to Claimant Christian V. Ekberg the sum of \$350,000.00.

3. All other claims and demands by Christian V. Ekberg are denied, including claims for exemplary and punitive damages.

4. All claims with respect to Smith Barney Inc.'s Counterclaim are dismissed.

5. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 10205(c) (formerly Section 44) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$1,000.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be split between the parties and are calculated as follows:

Nine hearing sessions @ \$1,000.00/session	=	\$9,000.00
Total fees assessed	=	\$9,000.00
Claimant Ekberg's share (50%)	=	\$4,500.00
Credit for hearing deposit	=	\$1,000.00
Balance due	=	\$3,500.00

Respondent Smith Barney's share (50%)	=	\$4,500.00
Balance due	=	\$4,500.00


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

ARBITRATORS

Name Public / Industry

James D. Knotter, Esq.	Public Arbitrator
Edward F. Kolker, Esq.	Public Arbitrator
Richard G. Brand	Industry Arbitrator

Concurring Arbitrators' Signatures



James D. Knotter, Esq.

Edward F. Kolker, Esq.

Richard G. Brand

Date of Decision: 2/21/97

Date Served: February 21, 1997

Respondent Smith Barney's share (50%)	=	\$4,500.00
Balance due	=	\$4,500.00

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

ARBITRATORS

Name Public / Industry

James D. Knotter, Esq.	Public Arbitrator
Edward F. Kolker, Esq.	Public Arbitrator
Richard G. Brand	Industry Arbitrator

Concurring Arbitrators' Signatures

James D. Knotter, Esq.

Edward F. Kolker
Edward F. Kolker, Esq.

Richard G. Brand

Date of Decision: _____

Date Served: February 21, 1997

Respondent Smith Barney's share (50%)	=	\$4,500.00
Balance due	=	\$4,500.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
-------------	--------------------------

James D. Knotter, Esq.	Public Arbitrator
Edward F. Kolker, Esq.	Public Arbitrator
Richard G. Brand	Industry Arbitrator

Concurring Arbitrators' Signatures

James D. Knotter, Esq.

Edward F. Kolker, Esq.



Richard G. Brand

Date of Decision: _____

Date Served: February 21, 1997