

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Gino Carosella and Helen Carosella

96-00027

Name of Respondent

Smith Barney, Inc.

REPRESENTATION

Claimants Gino Carosella and Helen Carosella ("Claimants") appeared *pro se*.

Respondent Smith Barney, Inc. ("Respondent") was represented by Etta M. Gumbs, Esq., Smith Barney, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed January 3, 1996.

Claimants' Uniform Submission Agreement was signed December 20, 1995.

Respondent's Statement of Answer was filed March 5, 1996.

Respondent did not file an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: August 21, 1996/two sessions

Hearing Location: Vincent Varallo Associates, Inc.
Philadelphia, PA

CASE SUMMARY

Claimants alleged that Respondents failed to follow specific instructions as to transactions in their accounts. Claimants alleged that on February 13, 1995, before Mr. Carosella departed on a long trip to Europe, Mr. Carosella wrote a letter to Robert Link ("Link"), Claimant's financial consultant at Respondent, directing Respondent to transfer securities in Claimants' accounts to Olde Discount Corporation. Claimants alleged that Link was also directed to sell mutual funds and transfer the proceeds as well. Claimants alleged that Mr. Carosella called Link on the same date and left a message to the same effect with Christine DiLauro, a sales assistant in Respondent's office. Claimants alleged that Mr. Carosella, in his telephone conversation with Ms. DiLauro, also gave instructions to cancel an existing "stop order" which had been initiated on February 8, 1995 and to sell one hundred (100) shares of

AMGEN at \$65. Claimants alleged that contrary to these instructions, Respondent sold all securities in their accounts, including AMGEN. Claimants alleged that Link contacted Mrs. Carosella after Mr. Carosella had left for Europe to inform her that Respondent had done everything requested in Mr. Carosella's telephone message. Claimants alleged that they did not learn until Mr. Carosella returned from Europe that Mr. Carosella's instructions regarding these accounts had not been properly executed.

Respondent denied Claimants' allegations that Respondent failed to follow instructions regarding the transfer of Claimants' accounts. Respondent maintained that Respondent's employees acted in good faith on the basis of Mr. Carosella's telephone message to accurately execute the instructions. Respondent maintained that Respondent attempted to contact Mr. Carosella personally and subsequently attempted to communicate with Mr. Carosella by calling Mrs. Carosella. Respondents maintained that any loss suffered by Claimants is the result of Claimants own actions.

RELIEF REQUESTED

Claimants requested restitution of the joint account transfer fee in the amount of \$50.00 and the IRA custodian fees of \$80.00; damages in the amount of \$21,380.00; the difference between the value of their accounts on February 13, 1995 (the date their stocks were sold), and the value of the accounts on the date of the hearing; punitive damages in the amount of \$2,000.00 plus \$600.00 for each three-month period after March 22, 1996 until the case is resolved in arbitration.

Respondent requested that the Statement of Claim be dismissed in its entirety and that all fees be assessed to Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

Pursuant to the by-laws of the NASD Regulation, the Arbitrator determined that Respondent was required to submit to this arbitration, notwithstanding a failure to submit an executed Submission Agreement. Therefore, Respondent is bound the Arbitrator's rulings and determinations.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to and shall pay to Claimants the sum of \$2,564.18.
2. That each party shall bear its own costs and expenses.
3. That the claim for punitive damages is denied.
4. That any and all relief not specifically addressed herein is denied in its entirety.

FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$300.00 = \$600.00


Forum Fees are assessed against Claimants and Respondent in equal amounts. Claimants are to receive credit for the \$300.00 hearing session deposit previously submitted to the NASD Regulation and have no further assessment. Respondent has a net assessment due of \$300.00.

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

DATE

ARBITRATOR'S SIGNATURE

9/12/96


Albert D. Sturtevant, Presiding
Public Arbitrator

Date Decision Served by NASD Regulation:

September 18, 1996