

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

George Feher

96-00099

Name of Respondents

Smith Barney, Inc.
Thomas J. Adams, Jr.

REPRESENTATION

For Claimant George Feher ("Claimant") appeared Peter B. Vaden, Esq. and James N. Deinlein Esq. of the law firm of Deinlein & Vaden located in Charlottesville, Virginia.

For Respondents Smith Barney, Inc. ("Smith Barney") and Thomas J. Adams, Jr. ("Adams") (collectively hereinafter "Respondents") appeared Sean J. Coughlin, Vice President and Associate General Counsel of Smith Barney, Inc. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: January 5, 1996.

Claimant's First Amended Statement of Claim filed February 20, 1996.

Claimant's Submission Agreement signed on: January 4, 1996.

Respondents Joint Answer to the Statement of Claim and the First Revised Statement of Claim filed on: March 4, 1996

Smith Barney's Submission Agreement executed by Sean J. Coughlin, Vice President, Associate General Counsel was signed on: March 1, 1996

Adams did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: June 26, 1996 - Two Sessions

The hearing was held at the Omni Hotel, in Richmond, Virginia.

CASE SUMMARY

Claimant, an eighty-seven year old retired musician, had been a client of Shearson/American Express ("Shearson"), now know as Smith Barney for approximately 15 years. Throughout this period, his personal broker was Adams, a financial consultant from Springfield, Massachusetts. Claimant alleged, among other things, that he had no educational or professional background in investing or financial matters and that he relied upon Adams to recommend suitable investments. Claimant maintained that he never met Adams and that all their communications were by telephone or written correspondence. Claimant alleged that in November 1987, when Claimant was 78, Adams recommended that he place all of his investment funds in Valero Natural Gas Partners, L.P. ("Valero"). Claimant alleged when Adams recommended the Valero purchases, Adams failed to disclose the risk level associated with such limited partnerships and that Adams erroneously told Claimant that the income was tax exempt.

Claimant alleged that in November 1992, Valero units had continued to decline. Claimant alleged that when Claimant asked Adams what to do, Adams recommended that Claimant purchase more units to "lower his average." Claimant alleged that in late 1993 there was a successful tender offer for the Valero units, Claimant liquidated his holdings of Valero at substantially below his 1987 purchase price. Claimant alleged that Adams, in January 1994, recommended that Claimant place the proceeds from his sale of Valero units into purchasing units of Kelley Oil and Gas Partners, L.P. (Kelley Oil"). Claimant alleged, that based on Adams recommendation, he purchased Kelley Oil but that Adams once again had failed to disclose the risks attendant to this investment. Claimant alleged that several months after Claimant purchased Kelley Oil its value fell by one half. Claimant alleged that once again Adams recommended that Claimant purchase more Kelley Oil to "average down" his investment.

Claimant alleged that the investments in the two limited partnerships at issue were wholly unsuitable for a person of Claimant's age and financial circumstances. Claimant alleged that Adams' recommendations to purchase the limited partnership interests violated industry "know your customer" and suitability standards. Claimant further alleged that Smith Barney and its predecessor failed to exercise proper supervision over Adams.

Respondents categorically denied all allegation of wrongdoing and specifically maintained that Claimant exercised control over his investments and made his own investment decisions.

Respondents maintained that Claimant initiated most contacts with Adams to obtain investment ideas and advice. Respondents maintained that all relevant investment information was sent to Claimant so that he could make informed decisions. Respondents maintained that they did not breach their fiduciary duty to Claimant, make unsuitable recommendations or failed to disclose any material information to Claimant. Respondents maintained that it was Claimant's investment decision to purchase Valero and Kelly Oil. Respondents maintained that they can not be blamed for Claimant's lack of diversity, as Adams recommended a variety of investments and Claimant chose to disregard his advice and invest only in Kelley Oil.

Respondents further maintained that Claimant did not maintain a "traditional" relationship with Respondents as he did not keep his assets in an account at Smith Barney in "street name." Respondents maintained that Claimant frequently called Kelly Oil himself to keep apprised of his investments. Respondents maintained that Claimant's investments in Valero and Kelley Oil met Claimant's stated investment objectives of "income with risk" and "appreciation with risk." Respondents maintained that Claimant seeks to hold Respondents responsible for his market losses that Claimant sustained as a result of his own actions.

RELIEF REQUESTED

Claimant requested an award of \$500,000 from the Respondents as compensation for actual losses, lost opportunity damages and punitive damages. In addition, Claimant requested attorney's fees and costs.

Respondent requested that the Statement of Claim be, in all respects, dismissed and that the costs, including attorney's fees be assessed against Claimant for bringing this claim.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel determined that an answer was filed on Adams behalf and that he was represented by counsel at the hearing, although Adams failed to file a submission agreement, pursuant to Rule 10301 (Old Section 12) of the Code of Arbitration Procedure ("Code"), the panel exercised its jurisdiction over Adams. Adams is bound by the rulings and determination set forth herein.

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. That the Respondent Thomas J. Adams, Jr. had recommended and placed Claimant George Feher into investments that were appropriate for Claimant, but that Claimant subsequently determined that those positions would be closed and the proceeds invested in a master limited partnership, Valero Oil and Natural Gas. The panel further concluded that a subsequent investment in another master limited partnership, Kelley Oil and Gas Partners, was consistent with the Claimant's past investment practices, was a knowing decision on his part and was not inappropriate at the time it was made. Accordingly the Claimant's claim is denied in its entirety and the panel finds for Respondents.
2. Claimant's claim for punitive damages is denied.
3. That the parties shall bear their respective costs, including attorneys' fees, except as forum fees are specifically addressed herein.
4. Any and all relief requested but not specifically addressed is denied.

FORUM FEES

Pursuant to Rule 10332 [Old Section 43(c)] of the Code, the panel has assessed the following forum fees:

$$2 \text{ hearing sessions} \times \$750 = \$1,500$$

Forum fees shall be split equally between the Claimant and the Respondents. Claimant is assessed forum fees in the amount of \$750, however, Claimant is entitled to offset this amount with his hearing session deposited of \$750 previously deposited so that no additional fees are due from Claimant. Respondents Smith Barney and Adams are jointly and severally assessed forum fees in the amount of \$750.

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

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DATE AWARD SIGNED

8.13.96

CONCURRING ARBITRATORS' SIGNATURES

B. Randolph Boyd
B. Randolph Boyd, Chairperson
Public Arbitrator

A. B. Jones, Jr., Panelist
Industry Arbitrator

Richard Cocke, Panelist
Public Arbitrator

DATE AWARD SERVED BY NASDR: August 23, 1996

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DATE AWARD SIGNED

August 26, 1996

CONCURRING ARBITRATORS' SIGNATURES

B. Randolph Boyd, Chairperson
Public Arbitrator

A. B. Jones, Jr.
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CONCURRING ARBITRATORS' SIGNATURES

B. Randolph Boyd, Chairperson
Public Arbitrator

A. B. Jones, Jr., Panelist
Industry Arbitrator

Aug 13, 1996

Richard Cocke
Richard Cocke, Panelist
Public Arbitrator

DATE AWARD SERVED BY NASDR:

August 23, 1996