

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration BetweenName of Claimant(s)

Shirley Levine

96-00504

Name of Respondent(s)Smith Barney Inc.
Joseph Marc Blumenthal

REPRESENTATION

For Claimant Shirley Levine, ("claimant") appeared Richard D. DeVita, Esq., Hoboken, New Jersey.

For Respondent Joseph Marc Blumenthal ("Blumenthal") appeared Michael F. Bachner, Esq., New York, New York. Blumenthal previously entered into a Settlement Agreement with claimant. Claimant alleged that Blumenthal failed to comply with the terms of the Settlement Agreement and requested a hearing on the allegations in the Statement of Claim with regard to Blumenthal. Blumenthal was no longer represented by counsel at the time of the hearing. Blumenthal did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: February 5, 1996.

Claimant's Submission Agreement signed on: February 16, 1996.

Statement of Answer filed by Respondent Blumenthal on or about May 20, 1996.

Respondent Blumenthal did not execute a Uniform Submission Agreement as required pursuant to Rule 10314 of the Code of Arbitration Procedure.

Claimant's Response to Respondent Blumenthal's Statement of Answer filed: May 28, 1996.

HEARING INFORMATION

Pre-Hearing Conference: August 29, 1996.
September 9, 1996

Hearing Date/Sessions: June 18, 1996/One Session

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Hearing Location: Office of NASD Regulation, Inc., New York, New York.

CASE SUMMARY

Claimant alleged that, at Blumenthal's suggestion, she closed an IRA which represented her sole retirement funds, and rolled over the funds to Blumenthal at Prudential Securities, Inc. ("PSI"). Claimant also alleged that she advised Blumenthal to buy only safe conservative investments. Claimant asserted that, when Blumenthal transferred to Smith Barney, Inc. ("SBI"), he persuaded her to transfer her account to him at SBI. Claimant alleged that, within six months of transferring to SBI, Blumenthal effected the sale of the the conservative Federal Home Loan Mortgage Corp. bonds that had been purchased for her account at PSI, and, with the proceeds, purchased shares of U C'N WIN Systems Ltd., a speculative penny stock, without her prior authorization.

Claimant further alleged that the purchase of U C'N WIN was unsuitable and unreasonable and a violation of New York Stock Exchange and NASD rules and the Penny Stock Disclosure Rules. Claimant asserted that Blumenthal violated his fiduciary duty to her. Claimant also asserted that she repeatedly requested that Blumenthal correct the U C'N WIN position. Claimant alleged that, although he assured claimant that the trades would be corrected, Blumenthal did not correct the transaction and continued to falsely represent the status of her IRA by making false and extravagant representations as to the performance of the U C'N WIN stock.

Blumenthal denied the allegations in the Statement of Claim and maintained that the securities in claimant's account were sold as instructed. Blumenthal also maintained that the Statement of Claim did not state a cause of action upon which relief could be granted and that the relief requested was barred by the doctrines of waiver, ratification and laches. Blumenthal also contended that the relief requested was barred by the claimant's failure to mitigate damages and further barred by the assumption of risk inherent in all securities transactions. Blumenthal maintained that punitive damages and attorneys fees could not be granted as a matter of law.

RELIEF REQUESTED

Claimant requested: actual compensatory damages in the amount of \$29,500; attorneys fees, costs, fees and interest; punitive damages; referral to the NASD's Division of Enforcement and any other remedy deemed appropriate.

Respondent Blumenthal requested dismissal of the Statement of Claim in its entirety.

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 NASD Regulation, Inc.

Respondent Smith Barney, Inc. previously entered into a Settlement Agreement with claimant. Claimant requested that the matter be heard with respect to the allegations in the Statement of Claim against Respondent Blumenthal only. Respondent Smith Barney participated in one prehearing conference on September 9, 1996, and is included in the assessment of forum fees for that prehearing conference only.

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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. Respondent Joseph Marc Blumenthal be and hereby is liable and shall pay to claimant the sum of \$23,879.00 together with interest at 9% per annum from June 1, 1995 through the date of this Award;
2. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee and has assessed the following forum fees:

Two (2) prehearing conferences x \$300.00 = \$600.00 plus one (1) hearing session x \$300.00 = \$900.00 minus claimant's hearing session of \$300.00 equals:

TOTAL OUTSTANDING = \$600.00

Claimant Shirley Levine be and hereby is liable for the sum of \$150.00 representing one half of the forum fee assessed for the prehearing conference held on September 9, 1996.


Smith Barney, Inc. be and hereby is liable for the sum of \$150.00 representing one half of the forum fee assessed for the prehearing conference held on September 9, 1996.

Respondent Joseph Marc Blumenthal be and hereby is liable for the sum of \$600.00 representing 100% of the forum fees assessed for the prehearing conference held on August 29, 1996 and the hearing session held on June 18, 1996. Respondent owes claimant the sum of \$300.00 and owes NASD Regulation, Inc. the sum of \$300.00.

Fees are payable to the NASD Regulation, Inc.

Arbitrator's Signature
Name

QMCNICK


Robert Pincus, Esq.

I, Robert Pincus; do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.


Robert Pincus, Esq.

Date of Decision: July 2, 1997