

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Stanford and Judy Cohen

96-00549

Name of Respondents

Smith Barney Inc.
Steven Mallah

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 6, 1996, Claimants Stanford and Judy Cohen ("Claimants"), through their representative and counsel, Donald T. Norton, Esq., alleged that Respondent Steven Mallah ("Mallah") of the Respondent firm Smith Barney Inc. ("Smith Barney") approached Claimants and solicited the purchase of Service Merchandise call options. Claimants contended that Mallah stated that he had "sure fire insider information" that Cellcom stock would dramatically increase in value. Claimants further contended that Mallah used this "insider information" to induce Claimants to purchase 1,000 shares of the stock. Claimants asserted that Mallah solicited Mr. Cohen to buy another 500 shares which he again stated would be increasing in value according to his "insider information". Claimants further asserted that they lost all of their investment after these particular stocks became worthless. Claimants alleged that at all times, Mallah was an agent and/or employee of Smith Barney, and Smith Barney was responsible for Mallah's actions. Claimants further alleged that due to the wrongdoing of the Respondents, they have suffered damages for which the Respondents should be held liable.

Respondents Smith Barney Inc. and Steven Mallah, through their in-house counsel and representative, Ann Parry, Esq., maintained that Respondents denied any allegations of wrongdoing or any liability to Claimants. Respondents further maintained that before Claimants opened their account at Smith Barney, Mallah and Claimants had a social relationship during which Mr. Cohen stated that he was an experienced investor who traded options, bought stock on margin, and was not adverse to speculating in lower priced securities. Respondents alleged that in the fall of 1989, Claimants filled out a New Account Application and Option Suitability form which stated that the Claimants had a household income of \$175,000.00, a liquid net worth of \$400,000.00, a total net worth of \$1,000,000.00, and were willing to assume risk as part of their investment strategy. Respondents further alleged that Mr. Cohen was fully aware that he was speculating in a low priced security, and was financially able to undertake the risk he was assuming.

Respondents maintained that Mallah never claimed that he had insider information and further maintained that Claimants purchased the second installment of Cellcom in response to a temporary rise in its price. Respondents alleged that the Claimants had suffered a legitimate market place loss for which the Respondents should not be held liable. Respondents further alleged that they had committed no wrongdoing and requested that the claims of the Claimants be dismissed.

In a reply to the Respondents' Answer, Claimants maintained that Mallah "hounded" Mr. Cohen and kept insisting that he had "insider information" which made investment in Cellcom issues a "sure fire winner". Claimants further maintained that Mr. Cohen used other brokers to invest with and only after repeated pressure from Mallah did he relent to Mallah's claims of "insider information". Claimants alleged that as an agent and employee of Smith Barney, Mallah conducted himself unprofessionally and unethically. Claimants further alleged that because Mallah acted as Smith Barney's agent, Smith Barney should be held responsible for Mallah's actions.

RELIEF REQUESTED

Claimants Stanford and Judy Cohen requested \$6,598.51 in actual damages.

Respondents Smith Barney Inc. and Steven Mallah requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Randall L. Rubin, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Stanford and Judy Cohen, on January 25, 1996, and by the Respondent Smith Barney Inc., on March 18, 1995, and by Respondent Steven Mallah, on March 15, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Stanford and Judy Cohen, against the Respondents Smith Barney Inc. and Steven Mallah, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Stanford and Judy Cohen, shall be retained by the NASD, Inc.

AFFIRMATION

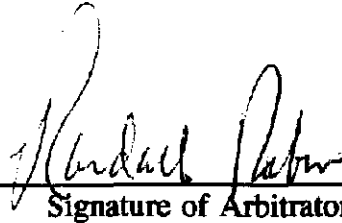
STATE OF Florida

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SS:

COUNTY OF Dade

I, Randall Rubin, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION:

June 28, 1996