

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Ralph Girafalco

96-00804

Name of Respondents

Smith Barney, Inc.
Anthony Snaith

REPRESENTATION

Claimant Ralph Girafalco ("Claimant") was represented by Frank J. Williams, Esq., O'Donnell, Hagner & Williams, Paoli, PA.

Respondents Smith Barney, Inc. ("SB") and Anthony Snaith ("Snaith") were represented by Ellen Slipp, Esq., Smith Barney, Inc., New York, NY.

CASE INFORMATION

Claimant's Statement of Claim was filed February 23, 1996.

Claimant's Uniform Submission Agreement was signed February 19, 1996.

The Joint Statement of Answer of SB and Snaith was filed May 10, 1996.

SB's Uniform Submission Agreement was signed April 30, 1996.

Snaith's Uniform Submission Agreement was signed April 23, 1996.

HEARING INFORMATION

Hearing Date/Sessions: January 8, 1997/one session

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Respondents were negligent in the management of Claimant's account and breached their contract with Claimant. Claimant alleged that Respondents failed to provide adequate information to Claimant so that Claimant could make informed decisions regarding his investments. Claimant alleged that he is an inexperienced investor who reasonably relied upon Respondents to provide him with appropriate information regarding transactions in this account. Claimant

alleged that Respondents persuaded him to authorize the purchase of 1,000 shares of US Bioscience, Inc. ("Bioscience") on October 20, 1994 at \$6 3/8. Claimant alleged that on October 21, 1994 Claimant, after consulting with Snaith, instituted a stop loss order for \$5 5/8 on the shares of Bioscience to minimize any possible loss due to a negative outcome of a meeting scheduled for December 12, 1994 between Bioscience and the Federal Drug Administration ("FDA") regarding a request from Bioscience. Claimant alleged that Snaith contacted Claimant on December 10, 1994 and recommended that the stop loss order be increased to \$5 7/8, which Claimant agreed to do to further minimize Claimant's risk. Claimant alleged that he found out, for the first time on December 12, 1994, that the stop loss order would have no effect protecting his investment if the stock opened at a lower price than the stop loss order. Claimant alleged that following the meeting between Bioscience and FDA, it was announced that FDA did not approve the request of Bioscience. Claimant alleged that Snaith advised Claimant that the stock was going to fall and the company might even go out of business. At that point, Claimant alleged that Snaith recommended that the stop loss order be removed and that the stock be sold when it opened. Claimant alleged that on December 13, 1994 Bioscience opened at \$1 5/8 and Claimant's positions in Bioscience were sold at that price. Therefore, Claimant alleged that had Respondents failed to adequately inform him of how the stop loss order operated and exposed him to excessive risk.

Respondents denied all allegations of negligence or wrong-doing as asserted in the Statement of Claim. Respondents maintained that when Claimant informed Snaith that Claimant was interested in purchasing shares of Bioscience, Snaith informed Claimant that SB did not follow the stock and that Snaith had no knowledge of the company. Respondents maintained that at Claimant's request, Snaith obtain some information concerning Bioscience and forwarded it to Claimant. Respondents maintained that the information indicated that Bioscience's only product was one new drug for which there was no approval from the FDA and that the company's success or failure was dependent on that approval. Respondents maintained that Snaith suggested that Claimant carefully consider purchasing such a risky stock as Bioscience. However, Respondents maintained that Claimant insisted and as the transaction was suitable because Claimant was financially capable of sustaining such a loss, the purchase was made. Respondents maintained that Claimant was informed that a stop loss order did not guarantee a selling price, but instead became a market order when the stock traded at the stop loss order price or lower. Respondents also maintained that Claimant was informed that Bioscience could move from a price above Claimant's stop loss figure to a price below Claimant's stop loss figure without ever hitting Claimant's exact stop loss order price. Respondents maintained that Snaith specifically informed Claimant that if such a movement occurred, it would trigger the sale of Claimant's shares at the current market price. Respondents maintained that Claimant spoke with Respondents several times each week before and after the purchase of Bioscience and Claimant was knowledgeable about Bioscience activities. Respondents maintained that Claimant refused suggestions to sell Bioscience but that Claimant did agree to raise the stop loss figure to \$5 7/8 on December 10, 1994 and was again informed that there was no guarantee that the shares would be sold for that price. On the evening of December 12, 1994, Snaith spoke with Claimant and was instructed by Claimant to sell Bioscience the next morning at market price. Respondents raised the affirmative defenses of failing to state a claim for which relief may be granted; waiver, estoppel and ratification; laches; failure to mitigate damages; contributory negligence; and assumption of risk.

RELIEF REQUESTED

Claimant requested relief in the amount of \$4,250.00.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all costs and expenses, including reasonable attorney's fees, be assessed to Claimant.

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.

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 the Statement of Claim is dismissed in its entirety.
2. That Respondent Anthony Snaith may request that the NASD Regulation expunge all reference to this arbitration from his registration records maintained by the Central Registration Depository.
3. That each party shall bear its own costs and expenses.
4. That Respondents, jointly and severally, are liable to and shall reimburse Claimant \$50.00 for one-half of the hearing session deposit previously submitted to the NASD Regulation by Claimant.
5. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

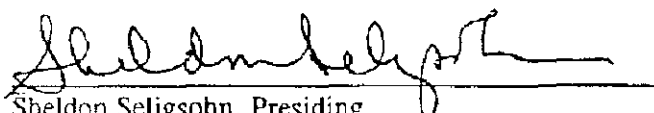
1 session x \$100.00 = \$100.00

Forum Fees are assessed to Claimant at \$50.00 and to Respondents, jointly and severally, at \$50.00. Claimant received credit for the \$100.00 hearing session deposit previously submitted to the NASD Regulation for which he will be reimbursed \$50.00 by Respondents as specified in the award. Therefore, no further forum fees are due.

DATE

ARBITRATOR'S SIGNATURE

1/21/97


Sheldon Seligsohn, Presiding
Public Arbitrator

Date Decision Served by NASD Regulation:

January 23, 1997