

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Hung Ching Du

96-00970

Name of Respondent

Smith Barney, Inc.

REPRESENTATION

Tommy P. Baer, Esq., of the firm of Canfield, Moore, Shapiro, Sease & Baer, Richmond, Virginia, represented Hung Ching Du ("Claimant") at the hearing.

Etta M. Gumbs, Esq., a Vice President of Smith Barney, Inc., represented Smith Barney, Inc. ("Respondent") at the hearing.

CASE INFORMATION

The Statement of Claim was filed by Claimant on March 4, 1996.

Claimant's Submission Agreement was executed and notarized on February 29, 1996.

Respondent's Statement of Answer was filed on May 31, 1996.

Respondent's Submission Agreement was executed and notarized on May 30, 1996.

HEARING INFORMATION

Hearing Date/Sessions: December 18, 1996 - 2 sessions

Hearing Location: Omni Richmond Hotel
Richmond, VA

CASE SUMMARY

Claimant alleged the following:

Hung Ching Du, Claimant, was the owner of 5,000 warrants of GST Telecommunications Inc. purchased from Mr. Emory Williams, employee and broker with Smith Barney Inc., Respondent, in Richmond, Virginia.

On May 16, 1995, Williams called Du and advised him of his option to convert the warrants into GST shares at the rate of one warrant for one share of GST stock and \$3.48 Canadian (\$2.60 American) per share. Later that same day, Du called Williams and questioned the terms of the conversion, telling Williams it was his understanding from a friend that the conversion requirement was two warrants for one share and cash. Williams assured Du that the ratio was in fact one to one.

On May 17, 1995, Du sent a check to Smith Barney in the amount of \$13,000.00 (\$5,000.00 x \$2.60). On or about May 19, 1995, Du again spoke to Williams and questioned the conversion terms. Williams confirmed the terms and faxed to Du two wires setting forth the terms as originally represented by Williams to Du.

On May 25, 1995, Williams called Du, and, unable to reach him, left word for him to return the call. Du reached Williams the next morning, May 26, and Williams told Du he made a mistake, that the conversion ratio was two warrants for each share of GST stock plus cash, and that he had only until 11:30 a.m. to decide whether he still wished to exercise the option. The time was then 11:25 a.m.

Under the circumstances, and knowing that when the warrants expire they are worthless, Du had no option except to confirm the exercise of the option. As a result of the misrepresentations and negligence of Smith Barney, Du was deprived of the issuance to him of 2,500 shares of GST stock, which is publicly traded on the American Stock Exchange and had a value at the time of the filing of this claim of approximately \$20,000.00.

Smith Barney has refused, and still refuses, to issue to Du 2,500 shares of GST stock that was to have been issued to Du and to which he is entitled.

Du demands the issuance to him of 2,500 shares of GST stock by Smith Barney or, in the alternative, the sum of \$13,500.00 (Smith Barney had retained approximately \$6,500.00 of Du's money but this has since been returned), and reasonable attorney's fees and costs.

Respondent answered as follows:

Claimant alleges Smith Barney is liable to him for an additional 2,500 shares of GST stock or in the alternative the sum of \$13,500 due to misrepresentation and negligence.

Smith Barney Inc. denies the allegations asserted by Claimant. Claimant through an unsolicited purchase bought 5,000 warrants of GST in January of 1994. Smith Barney did not follow GST nor at any time did it make any recommendations to Claimant concerning GST. In May of 1995, Smith Barney was notified by Royal Bank of Canada that the warrants purchased by Claimant were to soon expire and that warrant holders were entitled to subscribe for one common share of GST for each warrant plus a certain sum. Smith Barney Inc. passed this information to Claimant and Claimant gave his authorization to convert the warrants. Shortly before the warrants were to expire, Royal Bank of Canada contacted Smith

Barney Inc. and notified it of an error in the GST warrant exchange terms. Royal Bank corrected the offer to reflect the terms of the warrant when issued: one common share for two warrants plus a certain sum. Smith Barney immediately contacted the Claimant; Claimant called the day of expiration and authorized the conversion of his warrants to shares. Claimant received 2,500 shares pursuant to the offering of Royal Bank.

RELIEF REQUESTED

Claimant requested issuance to him of 2,500 shares of GST stock by Smith Barney Inc. or, in the alternative, damages in the amount of \$13,500.00, actual/compensatory, and reasonable attorney's fees and costs, against the Respondent.

Respondent filed an Answer to Claimant's Statement of Claim denying the Claimant's allegations and requesting denial of Claimant's Claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties present 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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim is dismissed in its entirety.
2. Each party shall pay its own costs and expenses, including attorneys' fees.
3. Any relief not specifically addressed herein is denied.

FORUM FEES

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

2 hearing sessions x \$300 = \$600

Forum Fees are assessed against the Claimant and Respondent equally. Claimant is assessed forum fees in the amount of \$300, however, Claimant is entitled to offset this amount with his hearing session deposit of \$300 so that no additional fees are due from Claimant. Respondent is assessed forum fees in the amount of \$300.

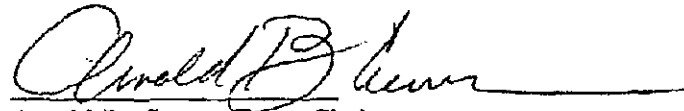
Fees are payable to the NASD Regulation, Inc.

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Date

1/16/97

Concurring Arbitrator's Signature



Arnald B. Crews, Esq., Chairperson
Public Arbitrator

Date Award Served by the NASD Regulation:

January 17, 1997