

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jean Wickland

96-01242

Name of Respondents

Smith Barney Inc.
Roland F. Biegler

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 20, 1996, Claimant Jean Wickland ("Claimant"), who appeared through her representative and counsel Carla B. Minckley, Esq., alleged that Respondents Smith Barney Inc. ("Smith Barney") and Roland F. Biegler ("Biegler") misrepresented an investment offered to her for sale. Claimant further alleged that on or about November 16, 1989, she received a telephone call from Biegler, a long-time friend, soliciting the purchase of E.F. Hutton Investment Trust #87-AM (the "Trust"). Claimant contended that Biegler failed to advise her that the securities might be called early and/or might decline in value. Claimant further contended Biegler failed to disclose or advise her of any sales charges, commissions, premiums or other costs that would be included in the investment. Claimant asserted that she purchased 272,433 units of the Trust totaling \$250,000.86, which apparently included an amount for \$4,010.21 in accrued interest. Claimant further asserted that she did not receive a prospectus and that she did not receive a copy of the confirmation order until several months after the transaction occurred. Claimant alleged that the confirmation and a note by Biegler at the bottom of the confirmation did not mention or disclose any type of commission, mark-up, sales charge, or premium for the investment. Claimant further alleged that Biegler's note on the confirmation stated that Claimant purchased "\$245,990.65 of face value" and that Claimant paid \$4,010.21 in accrued interest. Claimant contended that when the Trust was called on or about May 25, 1994, she received a payment which was \$11,194.29 below what she believed was due and that Smith Barney notified her that the \$11,194.29 "represents commissions and the premium paid." Claimant alleged that there was no disclosure of a premium or a commission by the Respondents, and that as a result of these misrepresentations and omissions, she has suffered damages for which the Respondents should be held liable.

Respondents Smith Barney Inc. and Roland F. Biegler, who appeared through their representative and in-house counsel Ann Parry, Esq., maintained that Claimant received all of the monies to which she was entitled and that her profit on this investment amounted to \$54,257.76. Respondents further maintained that it was very unlikely that Claimant did not receive a prospectus and a confirmation and also unlikely that Claimant believed or expected that she could invest nearly \$250,000.00 and not pay a reasonable sales charge to Respondents. Respondents alleged that though Claimant's investment was \$245,990.65, she had to pay \$4,010.21 in accrued interest which was returned to her as part of each of the interest payments received throughout the life of the Trust. Respondents further alleged that all risks concerning investments in Claimant's account were fully explained to Claimant, and Claimant knowingly, willingly, and voluntarily assumed the risk of investing in the market. Respondents maintained they had committed no wrongdoing and requested that the claims against them be dismissed.

In a Reply to the Respondents' Answer, Claimant alleged that she never received the trade confirmation of purchase until after she requested it from Biegler in the Spring of 1990, which was six months after the original purchase. Claimant reiterated that the note from Biegler at the base of the confirmation slip stated that Claimant purchased \$245,990.65 of face value, and that neither Biegler's note nor the confirmation itself disclosed any commission, sales charge, or premium charge.

In a Response to the Claimant's Reply, Respondents reiterated that it was unlikely that Claimant did not receive either the confirmation ticket or the prospectus when she made her initial investment in the Trust. Respondents further maintained that the losses which Claimant claims in this dispute were the normal sales charges associated with an investment of this nature, and that the existence and amount of the applicable sales charges was fully disclosed in the prospectus.

RELIEF REQUESTED

Claimant Jean Wickland requested \$10,000.00 in actual damages. Claimant further requested interest of \$1,520.00 through and including March 25, 1996, plus interest at \$2.37 per day from March 26, 1996 until paid or until May 25, 1996, and interest at \$2.56 per day from May 26, 1996 until paid. In addition, Claimant requested attorney's fees and costs in the amount of \$3,000.00.

Respondents Smith Barney Inc. and Roland F. Biegler requested that the claims of the Claimant be dismissed and that the costs of the proceeding be assessed against the Claimant.

AWARD

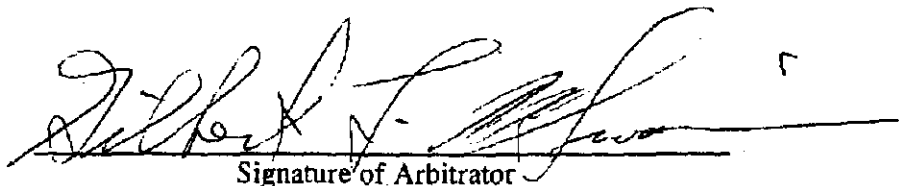
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gilbert L. McSwain, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Jean Wickland on March 7, 1996, and by the Respondent Smith Barney Inc. on May 6, 1996, and by the Respondent Roland F. Biegler on April 23, 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. Respondent Smith Barney Inc. and Respondent Roland F. Biegler are liable and shall pay to Claimant Jean Wickland \$10,000.00 in actual damages.
2. Respondents Smith Barney Inc. and Respondent Roland F. Biegler are jointly and severally liable and shall pay simple interest on the above amount at the rate of 8 1/2% per annum from March 20, 1996 until the date of payment of the award.
3. Respondents Smith Barney Inc. and Roland F. Biegler shall pay to Claimant Jean Wickland \$2,000.00 as reimbursement of attorney's fees pursuant to the Colorado Securities Acts of 1981 and 1990.
4. All other requests for relief are denied.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jean Wickland, shall be retained by the NASD, Inc. Respondent Smith Barney Inc. and Roland F. Biegler are liable and shall pay to Claimant Jean Wickland \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, GILBERT L. MCSWAIN, ESQ., 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: August 30, 1996