

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Gary L. Triplett

96-01511

Name of Respondents

Smith Barney, Inc.
Richard Conway
Richard J. Beatty

REPRESENTATION

Claimant Gary L. Triplett ("Claimant") appeared *pro se*.

Respondents Smith Barney, Inc. ("SB"), Richard Conway ("Conway"), Richard J. Beatty ("Beatty") were represented by Marion S. Chan, Associate General Counsel, Smith Barney, Inc., New York, NY.

CASE INFORMATION

The Statement of Claim was filed April 8, 1996.
Claimant's Uniform Submission Agreement was signed April 2, 1996.

The Joint Statement of Answer of Respondents SB, Conway and Beatty (collectively "Respondents") was filed May 31, 1996.
Respondents did not file executed agreements to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: January 13, 1997/two sessions
Hearing Location: Vincent Varallo Associates, Inc.
Philadelphia, PA

CASE SUMMARY

Claimant alleged that Beatty recommended an investment strategy which was inappropriate to Claimant's circumstances as a retiree and to his stated investment goal of doubling his money in ten years. Claimant alleged the portfolio Respondents induced Claimant to authorize involved too much risk because of insufficient diversification and excessive volatility. Claimant alleged that Smith Barney did not use proper systems for supervising and controlling its employee's activities and for insuring that customers are advised of risks associated with recommended investment strategies. Specifically, Claimant alleged,

Smith Barney failed to advise Claimant that it's Compliance Department had concerns relative to the type of stocks in the account; the commission/equity ratio; and the turnover rate. Claimant alleged that while Respondents maintained that the losses that Claimant incurred were caused by Claimant's decisions as well as market forces beyond the control of Respondents, the performance of the market during this period discredits the theory that market forces conspired to create these losses. Claimant alleged that the only decision the Claimant made was to trust Respondents to do a professional job of investing his money. Claimant alleged that he followed each and every recommendation that was made on the assumption that Respondents were acting in Claimant's best interests. Claimant alleged that he would not have knowingly embarked on a strategy which professional money managers considered to be too risky. Claimant alleged that the risks were never explained to Claimant. Claimant alleged that his investing history is a conservative one and it is inconceivable that at the time Claimant retired, he would change course and knowingly engage in speculative investments.

Claimant alleged that Respondents failed to implement an investment strategy in a professional manner. Claimant alleged that a 10% decline in the account value during a period when the market is showing increases of 25% or more is a strong indicator that implementation was not acceptable. Claimant also alleged that a specific criticism regarding implementation is the unbalanced practice of taking profits prematurely and never limiting losses in declining stocks, and the concentration in stocks for which Smith Barney was a market maker. Claimant alleged that the concerns of the Smith Barney Compliance Department also indicated problems with the selection and implementation of the investment strategy. Claimant alleged that damages are based on the assumption that even if Beatty was unable to deliver on his promise to perform better than a mutual fund, it would not be unfair to expect that he could do half as well.

Respondents denied all allegations of wrong doing as asserted in the Statement of Claim. Respondents maintained that any and all losses incurred by Claimant were due to decisions made knowingly and voluntarily by Claimant, as well as natural market forces for which Respondents should not be held liable. Respondents maintained that Claimant opened a joint account with his wife and both Claimant and his wife opened individual IRA accounts. Respondents maintained that Claimant does not complain about the joint account or his wife's IRA because Claimant told Beatty that he was willing to accept more risk on his own IRA account to increase the return. Respondents maintained that Claimant indicated on his New Account Application for his IRA account that he wanted Growth as the primary objective and allows for speculation. Respondents maintained that in the fall of 1994, Claimant informed Beatty that he would be accepting early retirement and that he would have a distribution which he wished to invest. Respondents maintained that Claimant stated that he wished to invest more aggressively and decided to make certain investments in equities. Respondents maintained that Claimant was informed that this would increase the risk. Respondents maintained that at no time did Respondents suggest to Claimant that Claimant's IRA account would perform like or better than a mutual fund.

Respondents maintained that during 1995, Claimant was closely involved in his investments and was in regular contact with Beatty and the investment strategy was successful until the fall of 1995. Respondents maintained that some of the securities purchased by Claimant lost value but as Claimant was in for long term returns, Claimant was advised to be patient. Respondents maintained that Claimant suddenly abandoned the investment strategy and liquidated all of his holdings in December 1995. In addition, Respondents raised the affirmative defenses of failure to state a claim upon which relief can be granted; failure to mitigate damages; waiver; estoppel; ratification and/or laches. Respondents maintained that any losses suffered by Claimant were the result of Claimant's own decisions and market fluctuations.

RELIEF REQUESTED

Claimant's amended request for relief at the hearing was compensatory damages of \$24,000; interest from the date the losses were incurred to the date of the arbitration hearing; and the costs of the arbitration proceeding.

Respondents requested that the Statement of Claim be dismissed in its entirety and that Respondents be awarded their costs and reasonable attorneys' fees.

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.

That pursuant to the by-laws of the NASD, the arbitrator determined that Respondents were required to submit to this arbitration, notwithstanding their failure to submit executed agreements to arbitrate. Therefore, Respondents are bound by the arbitrator's rulings and determinations.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Smith Barney, Conway and Beatty are jointly and severally liable to and shall pay to Claimant \$10,683.00.
2. That Respondents Smith Barney, Conway and Beatty are jointly and severally liable to and shall reimburse to Claimant \$300.00 for the hearing session deposit submitted by Claimant to the NASD Regulation.
3. That each party shall bear its own costs and expenses except as specifically addressed in this award and in the Forum Fees section below.
4. 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:

2 sessions x \$300.00 = \$600.00

Forum Fees are assessed to Respondents Smith Barney, Conway and Beatty, jointly and severally. Respondents are to receive credit for the \$300.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$300.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

ARBITRATOR'S SIGNATURE

2-11-97

Fred S. Pieroni

Fred S. Pieroni
Public Arbitrator

Date Decision Served by NASD Regulation: February 14, 1997