

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert H. Francis Revocable Living Trust

96-02153

Name of Respondents

Smith Barney, Inc.
William Russell

REPRESENTATION

For Claimant: Steele T. Williams, Esq. and Richard W. Groner, Esq. of the law firm of Groner & Schieb, Sarasota, Florida.

For Respondent Smith Barney, Inc.: Nicole Felton, Esq., in-house counsel at Smith Barney, Inc.

The Respondent William Russell did not appear.

CASE INFORMATION

Statement of Claim filed: May 17, 1996.

Amended Statement of Claim dated: June 18, 1996.

Claimant's Submission Agreement signed on: November 14, 1995.

Statement of Answer of Respondent Smith Barney, Inc. dated: August 14, 1996.

The Respondent Smith Barney, Inc. did not execute a Submission Agreement as required pursuant to Rule 10314 of the Code of Arbitration Procedure ("Code").

The Respondent William Russell did not execute a Submission Agreement or submit a Statement of Answer as required pursuant to Rule 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

One hearing session was conducted in this matter on April 25, 1997 in Tampa, Florida.

CASE SUMMARY

Claimant Robert H. Francis Revocable Trust alleged it had all of its financial investments managed by Respondent William Russell who was a licensed Florida registered representative who worked for one of the larger broker-dealers in the industry. Because of the indicia of authority Respondent Russell possessed and brandished, as a licensed employed registered representative, Claimant alleged it placed trust in Respondent Russell to advise it dutifully.

Claimant next alleged in mid 1994, with Claimant's trust in his back pocket, Respondent Russell lured Claimant to purchase investments outside of the normal realm of securities transactions and Claimant had no reason to believe that this was not similar to the many other transactions it had engaged in with the broker, William Russell, and, over the course of the next nine (9) months, Claimant gave Respondent Russell a sum total of \$29,300.00.

Respondent Smith Barney, Inc. maintained that the arbitration is clearly an irresponsible attempt to have Smith Barney, Inc. indemnify Claimant for alleged losses suffered by the Claimant for the Claimant's decision to write out checks personally to Mr. Russell from the Claimant's bank account at another institution in connection with dealings outside of Smith Barney, Inc. Respondent Smith Barney, Inc. further maintained that they are not liable for conduct by Mr. Russell outside the scope of his employment and they maintained an adequate and reasonable system of supervision and control over brokers in its employ.

RELIEF REQUESTED

Claimant requested damages in the sum of \$29, 300.00 plus interest at the legal rate.

Respondent Smith Barney, Inc. requested that the Statement of Claim be dismissed in its entirety, and that they be awarded their costs and reasonable attorneys' fees incurred in the defense of the matter.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 original(s) remain on file with NASD Regulation, Inc.

Prior to the commencement of the first hearing session, the arbitration panel was informed that the Claimant had entered into a settlement agreement with the Respondent Smith Barney, Inc.

Pursuant to Rule 10101 of the Code of Arbitration Procedure, the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that the Respondent William Russell was an associated person with a member firm of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondent William Russell pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that the Respondent William Russell was required to file with NASD Regulation, Inc. a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the arbitration panel found that the Statement of Claim was properly served upon the Respondent William Russell pursuant to Rule 10314(a) of the Code.

In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the arbitration panel found that NASD Regulation, Inc. provided Respondent William Russell with "due notice" of the hearing conducted in this matter. The arbitration panel, therefore, determined to proceed with the hearing without Respondent William Russell whose absence was unexcused.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent William Russell be and hereby is liable and shall pay to the Claimant the sum of \$25,000.00, pre-judgment interest specifically excluded.
2. Each party shall bear their respective costs including attorneys' fees.
3. The Respondent William Russell be and hereby is liable and shall pay to the Claimant the sum of \$500.00 representing the hearing session deposit and claim filing fee previously paid by the Claimant to NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, NASD Regulation, Inc. shall retain the claim filing fee and hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

Albert R. Neville, Jr.

Public

/S/

Irving F. Levitt

Public

/S/

Scott A. Spencer

Industry

Date of Decision: May 9, 1997